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Supreme Court of the United States

OCTOBER TERM, 1963

No. 157

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R. B. PARDEN, ET AL, PETITIONERS,

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, ET AL

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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PETITION FOR CERTIORARI FILED MAY 24, 1963

CERTIORARI GRANTED OCTOBER 14, 1963

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 157

R. B. PARDEN, ET AL., PETITIONERS,

vs.

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

## INDEX

Original Print

Proceedings in the United States Court of Appeals for the Fifth Circuit		
Request that only designated portions of record be printed	1	1
Record from the United States District Court for the Southern District of Alabama, Southern Division	8	7
Complaint, Civil Action No. 2551	8	7
Summons and return of service, Civil Action No. 2551	14	11
Motion to quash return of service of summons or to dismiss action, Civil Action No. 2551	15	12
Affidavit of C. U. Iryine in support of motion to quash, etc., Civil Action No. 2551	18	14
Affidavit of Ralph P. Eagerton in support of motion to quash, etc., Civil Action No. 2551	20	15
Exhibit A—Statement of net profit of the Alabama Beverage Control Board, 1955-1960	21	16

Record from the United States District Court for the  
Southern District of Alabama, Southern Division  
—Continued

<b>Affidavit of William J. Colley in support of motion to quash, etc., Civil Action No. 2551</b> .....	22	17
<b>Exhibit A—Statement of profit and (loss), Alabama State Docks Department, January 1, 1928–September 30, 1960</b> .....	26	20
<b>Exhibit B—Statement of profit and (loss), Terminal Railway Alabama State Docks, December 1, 1927–December 31, 1960</b> .....	27	21
<b>Exhibit C—Statement of interest and principal on harbor improvement bonds, etc., 1927–September 30, 1958</b> .....	29	23
<b>Exhibit D—Statement of payments by Alabama State Docks Department to State Personnel Board, 1954–1960</b> .....	30	24
<b>Exhibit E—Statement of interest on inland waterway improvement bonds, etc., 1958–1960</b> .....	30	24
<b>Affidavit of John Patterson, Governor of Alabama, in support of motion to quash, etc., Civil Action No. 2551</b> .....	31	25
<b>Recitation as to motion to quash, Civil Actions Nos. 2552, 2553, 2588 and 2679</b> .....	33	26
<b>Deposition of Earl M. McGowin</b> .....	34	27
<b>Deposition of C. U. Irvine</b> .....	42	34
<b>Exhibit 1—Map of the Alabama State docks, issue of June 1953</b> .....	68	55
<b>Exhibit 2—Vicinity map State owned ocean terminals at Mobile, Alabama</b> .....	69	56
<b>Exhibit 3—Railroad sketch of the layout of the tracks</b> .....	70	57
<b>Exhibit 4—Portion of rules governing Terminal Railway employees</b> .....	71	58
<b>Order quashing service and dismissing action, Civil Action No. 2551</b> .....	72	58
<b>Recitation as to order quashing service and dismissing action, Civil Actions Nos. 2552, 2553, 2588 and 2679</b> .....	72	59

# INDEX

iii

Original Print

Record from the United States District Court for the Southern District of Alabama, Southern Division —Continued		
Corrected order, Civil Action No. 2551 .....	73	59
Notice of appeal to the United States Court of Appeals, Civil Action No. 2551 .....	74	60
Recitation as to notice of appeal, Civil Actions Nos. 2552, 2553, 2588 and 2679 .....	74	60
Motion to consolidate cases on appeal, Civil Ac- tions Nos. 2551, 2552, 2553, 2588 and 2679 .....	75	61
Order consolidating cases on appeal .....	76	61
Complaint, Civil Action No. 2552 .....	77	62
Summons and return of service, Civil Action No. 2552 .....	83	66
Complaint, Civil Action No. 2553 .....	85	68
Summons and return of service, Civil Action No. 2553 .....	91	72
Complaint, Civil Action No. 2588 .....	93	74
Summons and return of service, Civil Action No. 2588 .....	100	79
Complaint, Civil Action No. 2679 .....	102	81
Summons and return of service, Civil Action No. 2679 .....	108	85
Designation of record on appeal, Civil Actions Nos. 2551, 2552, 2553, 2588 and 2679 .....	110	87
Order certifying original depositions of Earl M. McGowin and C. U. Irvine up to the United States Court of Appeals .....	112	88
Clerk's certificate (omitted in printing) .....	113	88
Minute entry of argument and submission .....	114	89
Opinion, Cameron, J. ....	115	89
Opinion, concurring specially, Brown, J. ....	129	101
Judgment .....	133	103
Petition for rehearing and brief in support (omit- ted in printing) .....	134	104
Order denying petition for rehearing .....	144	104
Clerk's certificate (omitted in printing) .....	145	105
Order allowing certiorari .....	146	105



[fol. 1]

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

Court of Appeals No. 19519

R. B. PARDEN,

versus

(C.A. #2551).

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al.,

R. B. PARDEN,

versus

(C.A. #2552).

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al.,

OTTO DRISKELL,

versus

(C.A. #2553).

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al.,

[fol. 2]

MRS. ELIZABETH W. WIGGINS, ETC., et al.,

versus

(C.A. #2588).

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al.,

AUBREY E. PRICE,

versus

(C.A. #2679).

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al.REQUEST THAT ONLY DESIGNATED PORTIONS OF RECORD  
BE PRINTED—Filed February 28, 1962

Pursuant to Rule 23 of the Rules of the United States Court of Appeals for the Fifth Circuit, the appellants in these consolidated cases hereby request that only the following designated portions of the record be printed:

1. Complaints in all five cases.
2. Summonses and Marshal's returns as to service in all five cases.
3. Motion to Quash Return of Service of Summons or to Dismiss Action filed in Civil Action No. 2551, and affidavits of Hon. John Patterson, William J. Colley, Ralph P. Eager-ton and C. U. Irvine filed in support of said motion in Civil Action No. 2551.

[fol. 3] 4. In lieu of printing the motions to quash return of service of summons or to dismiss action filed in Civil Actions Numbered 2552, 2553, 2588 and 2679, and the affidavits filed in support of said motions, the following statement should be printed immediately following the last affidavit printed:

"In Civil Actions Numbered 2552, 2553, 2588 and 2679, Motions to Quash Return of Service of Summons or to Dis-

miss Action, and supporting affidavits of Hon. John Patterson, William J. Colley, Ralph P. Eagerton and C. U. Irvine were filed in form and content identical in all material respects to the motion and affidavits filed in Civil Action No. 2551.

5. Deposition of Earl M. McGowin, excluding the exhibits offered in connection therewith.

6. Deposition of C. U. Irvine, excluding the exhibits offered in connection therewith except those exhibits or portions thereof specified in Paragraph 7, hereof.

7. Exhibits offered in connection with the deposition of C. U. Irvine identified as Plaintiffs' Exhibits 1, 2 and 3; that portion of Plaintiffs' Exhibit 4 which is designated Paragraph Number 1308 commencing on page 48 and ending on page 49 of said Exhibit 4, which exhibit is a booklet entitled "Rules Governing Terminal Railway Employees".

8. Orders entered on the 29th day of December 1961, and the 22nd day of January, 1962, in Civil Action Number 2551.

[fol. 4] 9. In lieu of printing the orders entered on the 29th day of December, 1961 and the 22nd day of January, 1962, the following statement should be printed in the record immediately following the orders requested to be printed in Civil Action Number 2551:

"Orders identical to those entered on December 29, 1961 and January 22, 1962, in Civil Action Number 2551, were entered in Civil Actions Numbered 2552, 2553, 2588 and 2679."

10. Notice of Appeal filed in Civil Action Number 2551.

11. In lieu of printing the Notice of Appeal filed in Civil Actions Numbered 2552, 2553, 2588 and 2679, the following statement should be printed in the record immediately following the Notice of Appeal in Civil Action Number 2551:

"Notices of Appeal identical to that filed in Civil Action Number 2551 were filed in Civil Actions Numbered 2552, 2553, 2588 and 2679 on January 25, 1962."

12. Motion to Consolidate the five cases on appeal.

13. Order entered January 29, 1962, consolidating the cases on appeal.

14. Designation of Record on Appeal filed on January 31, 1962.

15. Order of the United States District Judge dated February 1, 1962, certifying original depositions of Mr. Earl M. McGowin and Mr. C. U. Irvine to the United States Court of Appeals for the Fifth Circuit.

[fol. 5] 16. This designation.

Al. G. Rives, T. M. Conway, Jr., Attorneys for Appellants.

Rives, Peterson, Pettus & Conway, Tenth Floor, Massey Building, Birmingham, Alabama, Of Counsel.

IN UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA

R. B. PARDEN, Plaintiff,

versus

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on July 13, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, Defendants.

Civil Action File No. 2551

Suit for \$5,000.00 Damages For Personal Injuries Incurred While employed as Railroad Switchman for the Defendants by reason of Defendants' Negligence, in violation of Federal Safety Appliance Act.

[fol. 6]

**R. B. PARDEN** Plaintiff,

versus

**TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS,** whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on June 3, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, Defendant.

Civil Action File No. 2552

Suit Under Federal Employers' Liability Act For Personal Injuries in Amount of \$5,000.00.

**OTTO DRISKELL**, Plaintiff,

versus

**TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS,** whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on July 22, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, Defendants:

Civil Action No. 2553

Suit for \$5,000.00 Damages For Personal Injuries Incurred in Fall from Railroad Car, Under Federal Employers' Liability Act.



[fol. 7]

MRS. ELIZABETH W. WIGGINS and FRANK O. BURGE, JR., who sue in their capacity as Administrators of the Estate of John Ervin Wiggins, deceased, Plaintiffs,

versus

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, whose true and correct name and legal status is otherwise unknown to the plaintiffs, but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on November 14, 1958 and whose true and correct name and legal status will be added by amendment to the plaintiff's complaint when ascertained, Defendants.

Civil Action File No. 2588

Suit for \$50,000.00 For Personal Injuries and Resulting Death of John Ervin Wiggins, Under Federal Employers Liability Act, Title 45, USCA, Sections 51 et seq. and Section 59.

AUBREY E. PRICE, Plaintiff,

versus

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, whose true and correct name and legal status is otherwise unknown to the plaintiff, but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on October 2, 1959 and whose true and correct name and legal status will be added by amendment to the plaintiff's complaint when ascertained, Defendants.

[fol. 8] Civil Action File No. 2679

Suit for \$10,000.00 Personal Injuries On Account Of Negligence of Defendants. Brought under Federal Employers Liability Act and Federal Safety Appliance Acts or Hand Brake Act.

7

IN UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

R. B. PARDEN, Plaintiff,

vs.

Civil Action No. 2551

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on July 13, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, Defendants.

COMPLAINT—Filed February 23, 1961

Comes the plaintiff in the above styled cause and brings this action against the defendants Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on July 13, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, and for cause of action against the said defendants, alleges as follows:

I.

1. That the plaintiff R. B. Parden is a resident and citizen of Mobile County in the State of Alabama, his address being 1005 Oak Street, Mobile, Alabama.

## II.

1. That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks are common carriers by railroad and as such common carriers by railroad have at all times herein mentioned been engaged in the business of operating a railroad for the transportation of freight for hire in commerce between the several states of the United States of America and in foreign commerce.

2. (a) That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks are the only departments within the Government of the State of Alabama which operate solely from the money they make themselves.

(b) That the said defendants get no legislative appropriation, and

(c) That the said defendants operate as a self-sustaining business, generating their own funds.

[fol. 10]

## III.

1. That the jurisdiction of the United States District Court for the Southern Division of the Southern District of Alabama is based upon (a) An Act of the Congress of the United States known as the Federal Employers Liability Act, Title 45, U.S.C.A. Section 51 et seq, and (b) Another Act of the Congress of the United States known as one of the Federal Safety Appliance Acts and generally referred to as the Automatic Coupler Act, namely, Title 45, U.S.C.A. Section 2.

## IV.

1. That the defendants as such common carriers by railroad as described in Paragraph II, 1 of this complaint and their employees have at all times herein mentioned been subject to (a) The provisions of the aforesaid Federal Employers Liability Act, and Act of the Congress of the United States enacted for the protection and benefit of employees of common carriers by railroad engaged in such

aforesaid interstate and foreign commerce who are injured or killed in line of duty and (b) The provisions of the aforesaid Federal Safety Appliance Act.

## V.

### First Cause of Action.

For plaintiff's first cause of action, plaintiff adopts the allegations of Paragraphs I, II, III and IV of this complaint and adds thereto the following allegations, viz:

[fol. 11] Plaintiff avers that on, to-wit, July 13, 1958 plaintiff was employed by the defendants as a railroad switchman at Mobile, Alabama and that a part of plaintiff's duties as such railroad switchman for the defendants was in furtherance of such aforesaid interstate or foreign commerce or directly or closely and substantially affected such commerce and that on said date while plaintiff and other members of a switching crew of the defendants were engaged in and about the switching of railroad cars at the Interchange Yard of the Alabama State Docks in Mobile County, Alabama and while plaintiff was running along beside moving railroad cars in an attempt to uncouple two of said moving railroad cars, plaintiff was caused to stumble over a guard rail and was caused to be injured and damaged as follows: Plaintiff's back was reinjured and he was injured internally and a previous condition was aggravated all to such extent that plaintiff was caused to be disabled and made sick and sore and caused to suffer great physical pain and mental anguish and was hospitalized and caused to undergo serious and painful medical care and treatment and he was caused to incur expense for hospitalization and medical care and treatment and for medicines and he lost wages from his employment as a railroad switchman and plaintiff's power and capacity to work and earn money was impaired; and plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the officers, agents or employees of the defendants while acting within the line and scope of their employment by the defendants or by reason of a defect or insufficiency due to the negligence of the defendants in their

cars, engines, track, roadbed, works, machinery, appliances or other equipment.

[fol. 12]

## VI.

### Second Cause of Action.

For plaintiff's second cause of action, plaintiff adopts the allegations of Paragraph V of this complaint, except that in lieu of the following allegations in said Paragraph V, viz:

"and plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the officers, agents or employees of the defendants while acting within the line and scope of their employment by the defendants or by reason of a defect or insufficiency due to the negligence of the defendants in their cars, engines, track, roadbed, works, machinery, appliances or other equipment."

plaintiff inserts the following allegations, viz:

"and plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the defendants' violating the aforesaid Federal Safety Appliance Act known as the Automatic Coupler Act, namely, Title 45, U.S.C.A. Section 2."

## VII.

Wherefore, plaintiff prays judgment against the defendants under each of the aforesaid causes of action in the amount of Five Thousand (\$5,000.00) Dollars.

[fol. 13]

## VIII.

Plaintiff demands a jury trial.

Rives, Peterson, Pettus & Conway, By Al G. Rives,  
Attorneys for Plaintiff.

Tenth Floor, Massey Building, Birmingham 3, Alabama,  
Telephone ALpine 1-3275.



Note to United States Marshal:

Summons and complaint in this action should be served on Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks, etc. by leaving a copy thereof with the Honorable Earl M. McGowin, Director of the said Terminal Railway of the Alabama State Docks Department.

[fol. 14] IN UNITED STATES DISTRICT COURT  
Civil Action File No. 2551

R. B. -PARDEN, Plaintiff,

v.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, etc., Defendants.

SUMMONS—February 24, 1961

To the above named Defendants:

You are hereby summoned and required to serve upon Mr. AL. G. Rives, Attorney, Rives, Peterson, Pettus & Conway, plaintiff's attorney, whose address is: Tenth Floor, Massey Building, Birmingham 3, Alabama, an answer to the complaint which is herewith served upon you, within 20 (Twenty) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

William J. O'Connor, Clerk of Court, Minnie Pearl Cox, Deputy Clerk.

(Seal)

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

## [fol. 15]                      Return on Service of Writ.

I hereby certify and return, that on the 24th day of Feb. 1961, I received this summons and served it together with the complaint herein as follows: On February 24th, 1961, at Mobile, Ala. served copy of each on C. U. Irvine, General Manager of Operations, Terminal Railway of The Alabama State Docks Department; and Terminal Railway of Alabama State Docks, etc.

o J. L. May, United States Marshal.

By W. F. Armstrong, Deputy United States Marshal.

Marshal's Fees

Travel     \$ .40

Service     2.00

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2.40

Filed Feb. 27, 1961.

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IN UNITED STATES DISTRICT COURT

MOTION TO QUASH RETURN OF SERVICE OF SUMMONS OR  
TO DISMISS ACTION—Filed March 24, 1961

Comes now the Sovereign State of Alabama and appearing herein specially and solely for the purpose of making this motion and not otherwise submitting itself to the jurisdiction or processes of this Court moves the Court to dismiss the action or in lieu thereof to quash the return [fol. 16] of service of summons on the grounds:

1. The correct name of the defendant is the State of Alabama, a Sovereign State of the United States of America.

2. Terminal Railway Alabama State Docks is an agency of the Sovereign State of Alabama.

3. The Sovereign State of Alabama in operating the Terminal Railway Alabama State Docks is acting within a power reserved to the States under the Constitution of the United States.

4. This is an action sought to be commenced or prosecuted against the Sovereign State of Alabama by a citizen of a state.

5. The Sovereign State of Alabama has not consented to be sued and does not consent to be sued by the plaintiff.

6. The Sovereign State of Alabama has not waived its immunity to suit by the plaintiff.

7. Section 14 of the Constitution of the State of Alabama prohibits all officials of the State of Alabama and the legislature of the State of Alabama from subjecting the State of Alabama to suit as a defendant in any Court of law or equity.

8. The judicial power of the United States does not extend to controversies between a citizen of a state and state.

[fol. 17] 9. The judicial power of the United States does not extend to controversies between a citizen of the State of Alabama and the State of Alabama by virtue of Amendment XI to the Constitution of the United States.

10. This Court is without power to entertain this action or to issue process in this action.

11. This Court is without jurisdiction over the defendant or the subject matter of this suit.

12. The person upon whom service was attempted to be had by the marshal and to whom a copy of the summons and complaint was delivered, to-wit, C. U. Irvine, was not and is not an agent of the Sovereign State of Alabama upon which service could be effected.

Defendant requests oral argument.

Dated at Mobile, Alabama, this 23rd day of March, 1961.

MacDonald Gallion, As Attorney General of the State of Alabama.

Nicholas S. Hare, As Special Assistant Attorney General of the State of Alabama.

Of Counsel: Willis C. Darby, Jr., 307 First National Bank Building, Mobile, Alabama.

[fol. 18] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF C. U. IRVINE

I, C. U. Irvine, first being duly sworn do hereby depose and say:

1. I am an employee of the State of Alabama. I am employed at the State of Alabama's port facility, Alabama State Docks Department in Mobile, Alabama.

2. I make this affidavit in support of Motion to Quash Return of Service of Summons or to Dismiss Action.

3. I was employed by the State of Alabama as General Manager for Operations of the Alabama State Docks Department on February 24, 1961, when I was served with a copy of the Complaint and Summons in the above entitled cause. The position of General Manager for Operations was created by Act No. 604 of the Legislature of Alabama, Regular Session, Acts of Alabama, Page 853, Section 1, which provides:

Section 1. In addition to the position of General Manager heretofore authorized by law, there is hereby created within the State Docks Department the position of General Manager for Operations to be filled by appointment by the Director of State Docks. The General manager appointed shall serve at the pleasure of the Director, and his salary shall be \$10,000.00 per year, payable as other salaries in the State Docks Department are paid. His qualifications for the position shall include at least ten years' experience in port work in the field of administration and operation of docks. He shall be a man of good character, a legal resident [fol. 19] of Alabama, and shall have no financial interest in any type of facilities or property that the State Docks Department has acquired or may acquire or manage. He shall have no financial or personal interest in any business or enterprise of any kind with which the Department deals in the management of affairs or facilities under the control or jurisdiction of the Department.

4. I was not on February 24, 1961, and I am not now General Manager of Operations, Terminal Railway of the

Alabama State Docks Department or Terminal Railway of Alabama State Docks.

5. I was not on February 24, 1961, and am not authorized to accept service of process on behalf of the State of Alabama, The Terminal Railway Alabama State Docks, or any other Division of the State of Alabama.

C. U. Irvine.

Subscribed and sworn to before me this 29th day of September, 1961.

Willis C. Darby, Jr., Notary Public, State of Alabama at Large.

[fol. 20] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF RALPH P. EAGERTON IN SUPPORT OF MOTION  
TO QUASH RETURN OF SERVICE OF SUMMONS OR TO  
DISMISS ACTIONS

State of Alabama,  
County of Montgomery.

Ralph P. Eagerton being first duly sworn deposes and says:

1. I am the Chief Examiner of the Department of Examiners of Public Accounts of the State of Alabama.
2. This affidavit is made in support of the motion of the Sovereign State of Alabama to quash return of service of summons or to dismiss action.
3. The duties of my office are set forth in the Code of Alabama, 1940, as amended, Title 55 Article 7.
4. The audits and examinations of the Department of Examiners of Public Accounts of the State of Alabama are made under my supervision and direction.
5. Audits and examinations of the books, records and accounts of the Alabama Beverage Control Board, a Division of the State of Alabama, are made by my department each year.



6. A statement showing the net profit of the operations of the Alabama Beverage Control Board for the fiscal years 1955 through 1960 is attached hereto, marked Exhibit A and made a part hereof.

[fol. 21] 7. The fiscal data set forth in Exhibit A hereof was compiled from records of the Department of Examiners of Public Accounts of the State of Alabama by employees of the State of Alabama acting under my supervision and direction.

Ralph P. Eagerton.

Subscribed and sworn to before me this 5th day of Oct., 1961.

Mabel Amos, State at Large.

EXHIBIT A TO AFFIDAVIT OF RALPH P. EAGERTON

Filed Oct. 9, 1951.

Statement of  
Net Profit of the  
Alabama Beverage Control Board  
For the Period of 1955 through 1960.

1954- 5 .....	\$8,678,329.40
1955- 6 .....	7,601,846.47
1956- 7 .....	8,466,750.64
1957- 8 .....	8,070,017.94
1958- 9 .....	8,398,528.76
1959-60 .....	8,044,517.81

[fol. 22] **IN UNITED STATES DISTRICT COURT**

**AFFIDAVIT OF WILLIAM J. COLLEY IN SUPPORT OF MOTION TO  
QUASH RETURN OF SERVICE OF SUMMONS OR TO  
DISMISS ACTION**

State of Alabama,  
County of Mobile.

William J. Colley being first duly sworn deposes and says:

1. I am the Secretary-Treasurer of the Alabama State Docks Department, an Agency of the State of Alabama, and reside in the City of Mobile, State of Alabama.

2. This affidavit is made in support of the motion of the Sovereign State of Alabama to quash return of service of summons or to dismiss action.

3. The duties of my office are set forth in the Code of Alabama, 1940; Pocket Part, Title 38, Section 1(15) which provides:

**Secretary-Treasurer; Monthly Report of Director.**—The secretary-treasurer shall receive and disburse for the department, under the supervision of the director, all monies which the department is authorized to receive and disburse. He shall be responsible for the safekeeping thereof and shall properly account therefor. The director shall make a monthly report to the governor of his acts and doings.

4. The bookkeeping, accounting, reporting systems, procedures, records and accounting forms of the Alabama State Docks Department are prepared and formulated by the Department of Examiners of Public Accounts of the State of Alabama pursuant to Title 55, Article 7, Code of Alabama:

[fol. 23] 5. All monies received by the Alabama State Docks Department are the property of the State of Alabama. All monies expended by the Alabama State Docks Department are expended in accordance with the laws of the State of Alabama.

6. The Department of Examiners of Public Accounts audits and examines the books, records, vouchers and ac-

counts of the Alabama State Docks Department continuously and makes a formal audit report of the Alabama State Docks Department at least once in every period of two years pursuant to Title 55, Article 7, Code of Alabama.

7. The Department of Examiners of Public Accounts is in charge of a Chief Examiner who is appointed by, supervised and controlled by a joint legislative committee of the House of Representatives and Senate of the State of Alabama pursuant to Title 55, Article 7, Code of Alabama.

8. I am in charge of the accounting and auditing division of the Alabama State Docks Department. Periodic financial statements of each operating unit of the maritime and railroad facilities of the State of Alabama are prepared by employees of the State of Alabama in Mobile, Alabama, under my supervision and direction. The financial records of the operations of the facilities comprising the Alabama State Docks Department from the inception of operations in 1928 to the present time are kept in my office under my supervision.

9. A statement showing the net profit and loss of the Alabama State Docks Department from the inception of operations in 1928 through September 30, 1960, is attached [fol. 24] hereto, marked Exhibit A and made a part hereof.

10. A statement showing the net profit and loss of the facilities of the State of Alabama in Mobile known as the Terminal Railway Alabama State Docks from the inception of operations in 1928 through December 31, 1960, is attached hereto, marked Exhibit B and made a part hereof.

11. A statement showing the interest and principal on the Harbor Improvement Bonds issued by the State of Alabama pursuant to Amendment XII of the Constitution of the State of Alabama and laws of the State of Alabama paid by the State Treasurer from the general funds of the State of Alabama and not reimbursed by earnings of the Alabama State Docks Department from the inception of operations of the harbor facilities of the State of Alabama to September 30, 1958, is attached hereto, marked Exhibit C and made a part hereof.

12. In 1953 pursuant to a request of the Finance Director of the State of Alabama, and a resolution by the Alabama

State Docks Board of the State of Alabama, the Treasurer of the Alabama State Docks paid the State Treasury the sum of \$400,000.00.

13. The Legislature of the State of Alabama periodically appropriates funds from the Alabama State Docks account to the State Personnel Board. A statement of the funds paid by the Treasurer, Alabama State Docks Department to the State Personnel Board pursuant to the direction of the Legislature of the State of Alabama is attached hereto, marked Exhibit D and made a part hereof.

[fol. 25] 14. A statement showing the interest on Inland Waterway Improvement Bonds issued by the State of Alabama pursuant to Amendment LVIII of the Constitution of the State of Alabama and laws of the State of Alabama paid by the Treasury of the State of Alabama from the general funds of the State of Alabama and not repaid by earnings of the Alabama State Docks Department is attached hereto, marked Exhibit E and made a part hereof.

15. Proceeds of the original Harbor Improvement Bonds issued by the State of Alabama were used to construct the following operating units of the State's facilities in Mobile:

Wharves and warehouses .....	\$ 5,678,139.04
Cotton Warehouse .....	612,059.13
Terminal Railway .....	1,969,635.01
Bulk Material Handling Plant .....	956,117.61
Industrial lands .....	784,049.21

\$10,000,000.00

16. All of the Exhibits and other financial data set forth in this affidavit were compiled from records of the office of the Secretary-Treasurer of the Alabama State Docks Department by employees of the State of Alabama acting under my supervision and direction.

William J. Colley

Subscribed and sworn to before me this 6th day of October, 1961.

F. Guyton Allums, Notary Public.

[fol. 26]

## EXHIBIT A TO AFFIDAVIT OF WILLIAM J. COLLEY

Statement of  
Profit and (Loss)  
Alabama State Docks Department  
(An Agency of the State of Alabama)  
January 1, 1928 through  
September 30, 1960.

Jan. 1, 1928 through Dec. 31, 1929	\$184,980.13*
Calendar Year— 1930	(169,311.08)*
Calendar Year— 1931	( 79,804.77)*
Calendar Year— 1932	(191,343.24)*
Calendar Year— 1933	(148,892.75)*
Calendar Year— 1934	(178,852.17)*
Jan. 1, 1935 through Sept. 30, 1935	(234,318.93)*
Fiscal Year— 1936	( 69,565.23)*
Fiscal Year— 1937	44,884.21
Fiscal Year— 1938	114,000.21
Fiscal Year— 1939	131,146.53
Fiscal Year— 1940	76,510.83
Fiscal Year— 1941	( 14,529.63)
Fiscal Year— 1942	278,979.54
Fiscal Year— 1943	567,326.06
Fiscal Year— 1944	514,872.15
Fiscal Year— 1945	797,157.44
Fiscal Year— 1946	827,005.89
Fiscal Year— 1947	1,266,862.86
Fiscal Year— 1948	1,141,151.70
Fiscal Year— 1949	455,425.43
Fiscal Year— 1950*	377,607.31
Fiscal Year— 1951	281,957.37
Fiscal Year— 1952	696,537.42
Fiscal Year— 1953	927,888.38
Fiscal Year— 1954	1,012,338.95
Fiscal Year— 1955	730,517.12
Fiscal Year— 1956	1,090,082.63
Fiscal Year— 1957	813,378.50
Fiscal Year— 1958	(269,763.31)
Fiscal Year— 1959	788,530.79
Fiscal Year— 1960	470,315.71

\* Before Depreciation.



[fol. 27]

## EXHIBIT B TO AFFIDAVIT OF WILLIAM J. COLLEY

Statement of  
Profit and (Loss)Terminal Railway Alabama State Docks  
(an Agency of the State of Alabama)

December 1, 1927 through December 31, 1960.

Year	Operating Profit	Less Interest Allocation*	Net Profit After Interest Allocation
Dec., 1927	2,441.58	—	2,441.58
1928	12,325.29	—	12,325.29
1929	22,597.93	67,200.74	( 44,602.81)
1930	37,613.79	84,217.50	( 46,603.71)
1931	18,858.86	84,217.50	( 65,358.64)
1932	17,890.11	84,217.50	( 66,327.39)
1933	55,590.73	84,112.84	( 28,522.11)
1934	41,103.28	83,903.53	( 42,800.25)
1935	62,316.87	83,367.94	( 21,051.07)
1936	77,070.37	82,727.69	( 5,657.32)
1937	64,055.00	81,668.81	( 17,613.81)

\* Note—Interest Allocations on a fiscal year basis—Oct.  
1 through Sept. 30.

[fol. 28]

Year	Operating Profit	Less Interest Allocation*	Net Profit After Interest Allocation
1938	75,079.00	79,877.34	( 4,798.34)
1939	89,840.00	77,771.91	12,068.09
1940	105,240.00	75,666.47	29,573.53
1941	116,998.00	73,561.03	43,436.97
1942	153,973.00	71,455.59	82,517.41
1943	140,663.00	69,350.16	71,312.84
1944	98,295.00	67,244.72	31,050.28
1945	113,513.00	65,139.28	48,373.72
1946	62,600.00	63,033.84	( 433.84)
1947	237,150.00	60,928.41	176,221.59
1948	199,443.00	58,822.97	140,620.03
1949	83,596.00	56,717.53	26,878.47
1950	83,932.00	54,612.09	29,319.91
1951	125,758.00	52,506.66	73,251.34
1952	213,961.00	50,401.22	163,559.78
1953	343,012.00	48,295.78	294,716.22
1954	203,236.00	46,190.34	157,045.66
1955	215,724.00	44,084.91	171,639.09
1956	293,730.00	41,979.47	161,750.53
1957	30,242.00	39,874.03	( 9,632.03)
1958	(105,341.00)	37,768.60	(143,109.60)
1959	66,755.00	35,663.16	31,091.84
1960	33,811.00	33,557.72	253.28

[fol. 29]

## EXHIBIT C TO AFFIDAVIT OF WILLIAM J. COLLEY

Statement of Interest and Principal  
on Harbor Improvement Bonds  
Issued by the State of Alabama  
Pursuant to Amendment XII of the  
Alabama Constitution not Reimbursed  
for the Period 1927 through  
September 30, 1958:

Fiscal Year	Interest	Fiscal Year	Principal
1927	21,250.00	1933	25,000.00
1928	—	1934	50,000.00
1929	269,120.53	1935	75,000.00
1930	243,625.00	1936	100,000.00
1931	173,687.50	1937	175,000.00
1932	200,000.00	1938	250,000.00
1933	184,125.00	1939	250,000.00
1934	150,375.00	1940	250,000.00
1935	168,562.50	1941	250,000.00
1936	—	1942	250,000.00
1937	—	1943	125,000.00
1938	—	1944	250,000.00
1958	9,562.50	1945	250,000.00
		1946	250,000.00
		1947	250,000.00
		1948	250,000.00
		1949	250,000.00
		1950	250,000.00
		1951	250,000.00
		1958	125,000.00
Totals	<u>\$1,420,308.03</u>		<u>\$3,925,000.00</u>

[fol. 30]

## EXHIBIT D TO AFFIDAVIT OF WILLIAM J. COLLEY

Statement of Payments by  
Alabama State Docks Department  
(an Agency of the State of Alabama)  
to the State Personnel Board  
1954 through 1960.

1954 .....	\$ 2,799.56
1955 .....	2,306.96
1956 .....	4,961.93
1957 .....	5,345.00
1958 .....	8,009.00
1959 .....	9,178.00
1960 .....	2,202.00
	<u>\$34,802.45</u>

## EXHIBIT E TO AFFIDAVIT OF WILLIAM J. COLLEY

Statement of Interest on  
Inland Waterway Improvement Bonds  
Issued by the State of Alabama  
Pursuant to Amendment LVIII of the  
Alabama Constitution not Repaid  
for the period 1958 through 1960.

1958 .....	\$ 48,519.35
1959 .....	97,018.75
1960 .....	97,018.75
	<u>\$242,556.85</u>

Filed Oct. 9, 1961.

## [fol. 31] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HONORABLE JOHN PATTERSON, GOVERNOR OF THE  
STATE OF ALABAMA IN SUPPORT OF MOTION TO QUASH RE-  
TURN OF SERVICE OF SUMMONS OR TO DISMISS ACTION

State of Alabama,  
County of Montgomery.

I, John Patterson, first being duly sworn do hereby de-  
pose and say:

1. I am the Governor of the State of Alabama.
2. This affidavit is made in support of the motion of  
the Sovereign State of Alabama to quash return of service  
of summons or to dismiss action.
3. The Alabama State Docks Department is an execu-  
tive department of the State of Alabama. The director of  
the Alabama State Docks Department is appointed by me  
as Governor with the advice and consent of the Senate of  
the State of Alabama. The director serves at my pleasure.  
The director of the Alabama State Docks Department is a  
member of my cabinet.
4. The Legislature of the State of Alabama meets bi-  
annually. I, my staff and advisors met frequently in 1959  
and in 1961 and prepared a comprehensive legislative pro-  
gram pertaining to the State's maritime and inland water-  
way facilities operated by the Alabama State Docks De-  
partment. I, and my staff met with members of the House  
and Senate of the State of Alabama in connection with bills  
involving the State's maritime facilities.

[fol. 32] 5. During my administration the Legislature of  
the State of Alabama has authorized the State to borrow  
and spend the sum of seven and one-half million dollars on  
improvements and additions to the State's facilities oper-  
ated by the Alabama State Docks Department. The Legisla-  
ture also passed laws placing additional employees of the  
State employed at the Alabama State Docks Department  
under state civil service, increasing the maximum pay for  
the Director of the Department and creating new positions  
in the Department.



6. In my capacity as Governor, I regularly confer with the Director of the Alabama State Docks Department with respect to matters affecting the State as a whole and particularly with respect to the operation, maintenance, expansion and financing of the State's river and sea port facilities. By the statute, I, as Governor, am charged with the duty of making all final decisions with respect to the expansion of the State's port facilities and the financing thereof.

7. I, as Governor, am responsible to the people of the State of Alabama for the operation of the Alabama State Docks Department.

John Patterson.

Subscribed and sworn to before me this 10th day of Oct. 1961.

Mabel Amos, Notary Public, State at Large.

Filed Oct. 17, 1961.

[fol. 33] Recitation:

"In Civil Actions Numbered 2552, 2553, 2588 and 2679, Motions to Quash Return of Service of Summons or to Dismiss Action, and supporting affidavits of Hon. John Patterson, William J. Colley, Ralph P. Eagerton and C. U. Irvine were filed in form and content identical in all material respects to the motion and affidavits filed in Civil Action No. 2551.

IN UNITED STATES DISTRICT COURT  
Civil Action No. 2551

R. B. PARDEN, Plaintiff,

vs.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama, on July 13, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained.

DEPOSITION

Deposition of Mr. Earl M. McGowin, taken in the offices of the witness at Alabama State Docks Department, Mobile, Alabama, on October 26, 1961, commencing at approximately 5:15 o'clock P.M.

[fol. 34]

IN UNITED STATES DISTRICT COURT

Civil Action No. 2552

R. B. PARDEN, Plaintiff,

vs.

TERMINAL RAILWAY, etc., Defendant.

Civil Action No. 2553

OTTO DRISKELL, Plaintiff,

vs.

TERMINAL RAILWAY, etc., Defendant.

Civil Action No. 2679  
AUBREY E. PRICE, Plaintiff,

vs.

TERMINAL RAILWAY, etc., Defendant.

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Civil Action No. 2588

Mrs. Elizabeth W. Wiggins and Frank O. Burge, Jr., who  
sue in their capacity as Administrators of the Estate  
of John Ervin Wiggins, Deceased, Plaintiffs,

vs.

TERMINAL RAILWAY, etc., Defendant.

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APPEARANCES:

For Plaintiffs: Al G. Rives, Esq., and T. M. Conway,  
Jr., Esq., of Messrs. Rives, Peterson, Pettus & Conway,  
10th Floor, Massey Building, Birmingham 3, Alabama.

For Defendants: Nicholas S. Hare, Esq. Of Counsel:  
Willis C. Darby, Esq.

[fol. 35]

Stipulation

It is hereby stipulated by and between the parties that  
the reading over and signing of this deposition to or by  
the witness be and hereby are waived.

---

Mr. EARL M. McGOWIN, having been first sworn to speak  
the truth, the whole truth, and nothing but the truth, testi-  
fied as follows:

Direct examination.

By Mr. Rives:

Q. This is Mr. Earl M. McGowin?

A. Right.

Q. Mr. McGowin, do you have an official connection with  
the Alabama State Docks Department?

A. I am the Director.

Q. During what period of time have you been Director of the Alabama State Docks Department?

A. From January, 1959, to date.

Q. Is there a Terminal Railway of the Alabama State Docks Department?

A. Yes.

Q. Has there been a Terminal Railway of the Alabama State Docks Department continuously during the time you have been a Director of the Alabama State Docks Department?

A. Yes.

Q. Is Mr. C. U. Irvine General Manager of Operations of the Alabama State Docks Department?

A. Yes.

Q. During what period of time has he held that position?

[fol. 36] Mr. Hare: Let me interrupt right there. That gets to be a legal question by statute, and as to dates, we would have to help him, I expect, because it was changed back and forth in this Legislature.

Q. Well, can you elaborate any on Mr. Hare's remarks, Mr. McGowin, regarding the position of General Manager of the Operations of Alabama State Docks Department?

A. Other than to say he has been General Manager of our Operations ever since I have been here.

Q. Does he hold that position under your appointment?

A. No, he had that position when I came here. I believe originally it was by merit system appointment, and this is elaborating on what Mr. Hare said. The Legislature of, I believe, 1951.

Mr. Hare: Of 1956.

A. Maybe it was 1956—set up the—by statute a General Manager of Operations and a General Manager for Sales. The recent Legislature removed them and they are back under the merit system. I believe that is it.

Q. Isn't the position of General Manager of Operations of the Alabama State Docks Department filled by an appointment of the Director of the Alabama State Docks Department?

A. During that period—it is my understanding that during that period it was held by statute; that place was filled

by action of the Director, but Mr. Irvine was Director when I came, and I did not change.

[fol. 37] Q. Did the United States Marshal bring you the summons and complaint, that is, the Court papers in these cases of R. B. Parden, Otto Driskell, Mrs. Elizabeth Wiggins, et al., and Aubrey Price as Director of the Alabama State Docks Department?

A. I was served in only one instance, and that was this week, a subpoena.

Q. That was a subpoena, but prior to that had the United States Marshal come to you with any papers in these cases at all?

A. No.

Q. We, as attorneys of record for the respective plaintiffs in these cases, had directed in writing that the United States Marshal serve these papers on you as Director of Alabama State Docks Department. Do you know why he served them on Mr. C. U. Irvine, General Manager of the Alabama State Docks Department, rather than on you as Director?

A. I have no idea.

Q. You had no contact or discussion with the United States Marshal?

A. None whatever.

Q. Now, Mr. McGowin, will you examine this newspaper article that I am going to ask the deposition commissioner to mark as Exhibit 1 for identification?

(The reporter marked the document Exhibit No. 1 for identification to the deposition of Earl M. McGowin.)

Q. You may read this if you would like.

Mr. Hare: After you read it we would like to read it before you answer the question.

[fol. 38] (The document was then read by both the witness and Messrs. Hare and Darby.)

Q. Now, Mr. McGowin, you have examined Exhibit 1 for identification to your deposition. Have you previously seen that newspaper article or one like it?



A. Yes, I seem to recall seeing that at the time it was published.

Q. Were you interviewed by Mr. James E. Jacobson, news staff writer?

A. Yes.

Q. Was news writer James E. Jacobson quoting you when he wrote as follows: "The State Docks is also the only department within the state government which operates solely from the money it makes itself"?

A. Whether that was a direct quotation I can't recall. You understand in these interviews how they are done? You talk very glibly and very fast and he puts it together.

Q. Well, is that substantially a correct statement of fact in that article, the first sentence?

Mr. Hare: May I ask the attorney if he means a statement of fact as it is or a statement of fact as then stated?

Mr. Rives: As he—

A. Well, certainly, currently—

Mr. Hare: You were going to modify your question to make it clear what you mean?

[fol. 39] Q. Well, as Director of the Alabama State Docks Department, would you say that that is or is not a correct statement, that, "The State Docks is also the only department within the state government which operates solely from the money it makes itself"?

A. Well, I think what I was trying to say there was that we do not get a current legislative appropriation for operating purposes. Of course, you understand, the whole thing was started with public money. The State sold \$10,000,000 of Harbor Bonds originally, and since they are general obligation bonds of the State, in the event this department does not generate enough funds over and above operating expenses to pay those interest and principal payments, the general fund of the State is obliged to pick them up.

Q. Well, now, was News Writer James E. Jacobson quoting you when he made this statement in this article: "The Docks get no legislative appropriation"?

A. Yes, apparently that is right. At that time, now mind you, I think probably we were talking primarily about the Mobile operation and current appropriations. We do get an appropriation to defer the interest and principal payments on these Inland Docks bonds. That is a continuing appropriation. That has been done, however, since that interview, but—although the State was doing it on a year to year basis at the time.

Q. Well, was News Writer James E. Jacobson quoting you when he writes in this article as follows: "It (referring to the Alabama State Docks Department) operates as a self-sustaining business generating its own funds"?

A. Well, certainly, insofar as we can, but we have got the cushion of the State behind us.

Q. Well, this News Writer James E. Jacobson did have an interview with you and apparently this article that he [fol. 40] wrote was based on information that he obtained from you as Director of the Alabama State Docks Department?

A. That is correct.

Mr. Rives: We offer this as Exhibit 1 to the deposition of the witness McGowin.

Q. Does the Alabama State Docks Department operate from an accounting standpoint on a quarterly basis?

A. Actually, all operations are on an annual basis, but it has been our practice ever since I have been here, and I believe from the beginning of the Docks, to provide—to make monthly operating statements. I have adopted the policy since I have been here of publishing them only quarterly, but we do get a monthly operating statement, yes.

Q. Well, has the Alabama State Docks Department operated at a profit during the first three quarters of 1961?

A. Yes.

Q. Do you know about what that operating profit was during the first three quarters of 1961?

A. After interest and depreciation it was something in the neighborhood of \$700,000. I can tell you, though, that the operating—that the fourth quarter we operated at a very sizeable loss, which will reduce that figure.

Q. Well, as a matter of fact, Mr. McGowin, the Alabama State Docks Department has operated at a profit each year during the period that you have been Director of the Alabama State Docks Department, has it not?

A. Yes.

[fol. 41] Mr. Rives: I believe that is all.

Mr. Hare: No questions on our part.

Mr. Rives: Wait just a moment, please.

Q. Mr. McGowin, you have testified on direct examination that there is a Terminal Railway of the Alabama State Docks Department, and I would like to ask who is in charge of the Terminal Railway of the Alabama State Docks Department?

A. Well, basically, I am.

Q. Next to you, who is in charge of the operations of the Terminal Railway of the Alabama State Docks?

A. Mr. Irvine, as General Manager of our Operations, has the direction of the Terminal Railway under his own supervision along with all the other divisions of our Operations. I believe Mr. Wallace is the Terminal Railway Superintendent.

Q. But is Mr. Irvine as General Manager of the Alabama State Docks Department also General Manager of the Terminal Railway of the Alabama State Docks Department?

A. That is his responsibility, yes.

Q. And then under Mr. Irvine as General Manager of the Terminal Railway of the Alabama State Docks Department is a man named Anthony Wallace, who is Superintendent and General Yard Master?

A. His title, I believe, is General Railway Superintendent.

[fol. 42] Mr. Rives: There are other questions I could ask you, Mr. McGowin, but I believe you would prefer that I ask these questions of Mr. Irvine and Mr. Wallace, and I won't take any more of your time.

Mr. McGowin: Thank you.

## IN UNITED STATES DISTRICT COURT

Civil Action No. 2551

R. B. PARDEN, Plaintiff,

vs.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama, on July 13, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, Defendants.

## DEPOSITION

Deposition of Mr. C. U. Irvine, taken in the offices of Willis C. Darby, Jr., Esq., 307 First National Bank Building, Mobile, Alabama, on October 27, 1961, commencing at approximately 8:05 A.M.

[fol. 43]

## IN UNITED STATES DISTRICT COURT

Civil Action No. 2552

R. B. PARDEN, Plaintiff,

vs.

TERMINAL RAILWAY, etc., Defendant.

Civil Action No. 2553

OTTO DRISKELL, Plaintiff,

vs.

TERMINAL RAILWAY, etc., Defendant.

Civil Action No. 2679

AUBREY E. PRICE, Plaintiff,

vs.

TERMINAL RAILWAY, etc., Defendant.

Civil Action No. 2588

MRS. ELIZABETH W. WIGGINS and FRANK O. BURGE, JR., who  
sue in their capacity as Administrators of the Estate of  
John Ervin Wiggins, Deceased, Plaintiffs,

vs.

TERMINAL RAILWAY, etc., Defendant.

Appearances:

For Plaintiffs: Al G. Rives, Esq., and T. M. Conway,  
Jr., Esq., of Messrs. Rives, Peterson, Pettus & Conway,  
10th Floor, Massey Building, Birmingham 3, Alabama.

For Defendants: Nicholas S. Hare, Esq. Of Counsel:  
Willis C. Darby, Esq.

Stipulation.

It is hereby stipulated by and between the parties that the  
reading over and signing of this deposition to or by the  
witness be and hereby are waived.

[fol. 44] MR. C. U. IRVINE, having been first sworn to speak  
the truth, the whole truth, and nothing but the truth, tes-  
tified as follows:

Direct examination.

By Mr. Rives:

Q. This is Mr. C. U. Irvine?

A. Yes, sir.

Q. Mr. Irvine, do you have an official connection with the  
Alabama State Docks Department at Mobile?



A. Yes, sir.

Q. What is your official position with the Alabama State Docks Department in Mobile?

A. General Manager, Alabama State Docks.

Q. During what period of time and in what capacities have you been employed by or connected with the Alabama State Docks Department?

A. I commenced work in 1926 as an engineer on the—during the period of construction under General Sibert. In 1928 I was appointed Superintendent of the Bulk Handling Plant, and some years later, in 1937 or 1938, a Resident Engineer status for various construction work in addition to the supervision of the Bulk Handling Plant, and later—I don't recall the years—I was appointed Engineer, and at the same time maintained the other—supervision of the Bulk Plant, and in the status of Engineer of the Docks we had a modest administrative group, and—when was it? In 1957? Mr. MacFarland was the Director—the Legislature passed a law to permit the appointment of the General Manager of Operations, and since that time I have been General Manager of Operations.

Q. Does your position as General Manager of Operations of the Alabama State Docks Department include the Terminal Railway of the Alabama State Docks Department?

A. Yes, sir.

Q. Then you are General Manager of Operations of the Terminal Railway of the Alabama State Docks Department?

A. Of all departments. I would say the Docks Department, the Cold Storage Plant, the Grain Elevator, the Bulk Handling Plant, and the Terminal Railway.

Q. Now did the United States Marshal serve you as General Manager of the Alabama State Docks Department or as General Manager of the Terminal Railway of the Alabama State Docks Department with the summons and complaints, that is, the Court process in these cases of Par-den and Driskell and Wiggins and Price?

A. Yes, sir.

Q. When was the Terminal Railway of the Alabama State Docks Department constructed?

A. Well, the Terminal Railway was first as a construction railroad. I don't know the date that the certificate of convenience was issued, but in the neighborhood of 1925 or 1926.

Q. How many miles of trackage does the Terminal Railway of the Alabama State Docks Department possess?

A. Well, 50 miles, more or less. That is all the tracks.

Q. Now that includes all industrial tracks and the main line?

A. Owned by the State Docks.

Q. The trackage of approximately 50 miles is primarily industrial tracks except that the railroad does have a main line track extending from the main yard down to the Chickasaw area, does it not?

[fol. 46] A. That is right. I think there is about six miles altogether.

Q. About six miles of main line track?

A. What we call main line track.

Q. Now with reference to that main line track, is it used by any other railroads other than the Terminal Railway of the Alabama State Docks Department?

A. Yes, sir.

Q. What other railroads use that main line track?

A. It is used by the Southern and A. T. & N.

Q. That is the Alabama, Tennessee and Northern Railroad Company and the Southern Railway Company?

A. Yes. Now they have restricted districts. The Southern Railroad operates only between the Southern Railroad crossing and the Southern Kraft Plant.

Q. How many miles are involved there?

A. Oh, one mile, I guess; and the A. T. & N. has through train running rights between Sibert Junction or right close to the Southern Railroad crossing into their yard on the—over on the Industrial Canal. Now all railroads have running rights over a short section of the main line, maybe 1,000 feet long, and their connections to deliver and pick up cars at the interchange.

Q. Now when you refer to all the railroads, what other railroads are involved, Mr. Irvine?

A. The L. & N. and the G. M. & O.

Q. That is the Louisville and Nashville Railroad Company and the Gulf, Mobile and Ohio Railroad?

A. Yes, sir.

Q. Now, Mr. Irvine, is it true that the Terminal Railway of the Alabama State Docks Department serves the Docks as well as several large industries that are located either on state property or property near state property?

A. Yes, sir.

[fol. 47] Q. You were subpoenaed to bring a map of the trackage of the Terminal Railway of the Alabama State Docks Department and also the trackage used by the Terminal Railway. Did you bring such a map?

A. Yes, sir. I would have to say we do not have a complete map, but—this is an old map. We haven't an up-to-date map.

Mr. Rives: We would like for the deposition commissioner to identify these maps as Exhibits 1 and 2 to the deposition of the witness Irvine.

A. This is an addition, now. We had to make it over.

Q. He is taking down what you say, Mr. Irvine. Which one would come first?

A. Both maps would have to go together.

Q. We are going to have one of the maps marked Exhibit 1 to your deposition and the other one Exhibit 2 to your deposition. Now which would be the first one?

A. This one.

(The reporter marked the maps as instructed.)

A. And then Map No. 1 would show principally the trackage south of Beauregard Street, which has been laid since 1958, and then Map No. 2 would show the north extension to Chickasaw.

Q. In other words, the main line of the Terminal Railway of the Alabama State Docks Department would run from the area shown in Exhibit 1 to the area shown to the right-hand edge of Exhibit No. 2?

A. Yes.

Q. Now, Mr. Irvine, will you look at this rough pencil diagram and state whether or not that roughly shows the

[fol. 48] trackage of the Terminal Railway of the Alabama State Docks Department and the approximate location of the various industries on the tracks or that are served by the Terminal Railway? That doesn't purport to be a correct map, but does it roughly show the layout of the tracks?

A. It is a very good showing of the layout of the tracks except that the part south of Beauregard Street, which is the track serving the new piers, are not shown.

Mr. Rives: All right, we ask the commissioner to mark this Exhibit 3 to the deposition of the witness Irvine.

(The reporter marked the document as requested.)

Q. Now this Exhibit 3 shows an interchange yard. Does the Terminal Railway of the Alabama State Docks Department have a joint interchange yard at a location as shown on this map?

A. Yes, sir.

Q. I will ask you, Mr. Irvine, if the Louisville and Nashville Railroad Company and the Gulf, Mobile and Ohio Railroad Company and the Southern Railway Company and the Alabama, Tennessee and Northern Railway Company run their locomotives into that joint interchange yard in delivering cuts of cars to the Terminal Railway of the Alabama State Docks Department and in taking delivery of cars from the Terminal Railway of the Alabama State Docks Department?

A. Yes, sir.

Q. Well, now, I will ask you if on occasions these several railroads that I have just named would bring railroad cars to that joint interchange yard loaded with merchandise, and if the switch engines of the Terminal Railway of the [fol. 49] Alabama State Docks Department would classify those cars by switching operations and then take such loaded cars to various industries such as are shown on this Exhibit 3 to your deposition, the Gulf Shipyards or the American Cyanamid Company, or the International Paper Company or the Scott Paper Company or the Bemis Bag Company to be unloaded by those industries that I have just named.

A. Yes, sir.

Q. And I will ask you if, from time to time, the Terminal Railway of the Alabama State Docks Department would pick up loaded cars at these various industries that I have just named, such as Bemis Bag Company, Scott Paper Company, International Paper Company, American Cyanamid Company, Gulf Shipyard, Brickcrete Company, Alabama Power Company, and take those loaded cars and deliver them to either the Alabama, Tennessee and Northern Railroad Company or the Louisville & Nashville Railroad Company or the Southern Railway Company or the Gulf, Mobile & Ohio Railroad Company.

A. They delivered them to the interchange yard on a designated track, which would be the proper railroad to receive those cars.

Q. All right, sir, and then the engines of whichever railroad was involved would take those cars and move them on to points throughout the United States?

A. Yes, sir.

Q. And in many instances those loaded cars coming from these other railroads that I have just mentioned into this joint interchange yard and being delivered to these industries that I have just mentioned and loaded cars from these industries I have mentioned back to the joint interchange yard and delivered to these other railroads that I have just mentioned for transportation to other points in the United States would never go down onto the docks and be handled by any ship. Is that right?

[fol. 50] A. There might be an occasional exception, but generally the interchange is direct. It is not through the Docks. There may be a partially loaded car go to the Docks, but—

Q. Well, I mean, for example, the Louisville & Nashville Railroad Company would deliver a cut of 10 carloads of pulpwood for delivery to the International Paper Company. Those cars of pulpwood would come into your interchange yard by the L. & N. Railroad Company and would be picked up by the Terminal Railway of the Alabama State Docks Department and delivered to the International Paper Company and would never go down on the docks, would they?



A. Not on the docks, no. They would go into a classification yard on the east side of the L. & N. Railroad, but they would not go down on the docks.

Q. Well, they would go into the classification yard down on the east side of the L. & N. Railroad because of the fact that you haven't got sufficient trackage up in the joint interchange yard to do your classification. Isn't that right?

A. No, it is merely the normal switching, because a cut of, say, 40 cars delivered from the G. M. & O. Railroad may have one car of steel and a car of flour and then a car of wood which would have to go out in the country; so the whole cut is brought over to the east side and broken up, and that part of it that goes back to the country is set out on the country track.

Q. You mean back to what country?

A. Well, to Southern Kraft and Hollingsworth & Whitney.

Q. You mean you all call this area out here around Chickasaw the country?

A. That is right.

Q. We didn't know that until just now.

[fol. 51] Mr. Darby: May the record show that Mr. Irvine pointed on your map No. 3 to the spot marked "South Yard Area"?

Mr. Rives: That is all right.

A. If by chance they did deliver—and they do—a solid cut of wood where it is all known and all known where it is going, it would be classified on a track that we have for that purpose.

Q. In the interchange yard?

A. In the interchange yard.

Q. Well, Mr. Irvine, is it not true that daily the switch engines of the Terminal Railway of the Alabama State Docks Department and the switch crews that operate the switch engines of the Terminal Railway of the Alabama State Docks Department move loaded railroad cars that have originated in points outside of the State of Alabama and where the cars are destined to some of these industries that I have named, such as the International Paper Com-

pany, Scott Paper Company, American Cyanamid Company and the other industries that I have named?

A. Yes.

Q. And isn't it also a daily occurrence that these switch engines and switch crews of the Terminal Railway of the Alabama State Docks Department take loaded railroad cars from these various industries that I have mentioned where the loaded cars are destined to points outside of the State of Alabama?

A. Yes.

Q. And I will ask you if it isn't a daily occurrence that these switch engines and switch crews of the Terminal Railway of the Alabama State Docks Department move loaded railroad cars that originated outside of the State [fol. 52] of Alabama and have moved into the State of Alabama and are taken to the dockside and the cargo delivered into ships and transported to foreign countries?

A. Yes.

Q. And isn't it a daily occurrence that cargoes of ships from foreign countries are unloaded into railroad cars at the Alabama State Docks and then moved by the switch engines and switch crews of the Terminal Railway of the Alabama State Docks Department over to the joint interchange yard and there delivered to either the Louisville & Nashville Railroad Company or the Gulf, Mobile & Ohio Railroad Company or the Southern Railway Company or the Alabama, Tennessee & Northern Railroad Company for transportation into states outside of the State of Alabama?

A. Yes, sir.

Q. Now, Mr. Irvine, is it or not true that the principal source of revenue of the Terminal Railway of the Alabama State Docks Department is for switching services rendered to the connecting carriers that I have named?

A. Yes, sir.

Q. Now on these deliveries that the Terminal Railway of the Alabama State Docks Department makes to these various industries that I have mentioned and for delivering cars that are received from these various railroads that I have mentioned down to the docks for unloading and transportation of the cargoes to foreign countries or other ports,

does the Terminal Railway of the Alabama State Docks Department collect a switching charge from these railroads for those switching services?

A. Yes, sir.

Q. And the principal revenue of the Terminal Railway of the Alabama State Docks Department is for such switching services?

A. Yes, sir.

[fol. 53] Q. And I believe that the Terminal Railway of the Alabama State Docks Department has its switching area divided into switching zones, does it not?

A. Yes, sir.

Q. And the switching rates are based upon the switching to each zone?

A. Yes, sir.

Q. Those rates into these various switching zones are agreed upon between the Terminal Railway of the Alabama State Docks Department and the various connecting railroads?

A. Yes, sir.

Q. Now do you have any idea about how many loaded railroad cars are interchanged each day at the joint interchange yard with these several connecting carriers, on an average?

A. The record for loaded cars would run between 250 and 600 cars a day. We try to say we can handle from 100,000 to 120,000 cars a year—that is loaded cars. It would be more cars if you have the empty cars.

Q. What would be the average number of cars handled per day at the joint interchange yard between the Terminal Railway and the connecting carriers, including loads and empties?

A. Three or four hundred cars a day.

Q. About how many cars are interchanged each day for the paper mills?

A. Our country run averages around 120 cars a day, 100 to 120 cars a day.

Q. And those cars going to the country are frequently delivered in cuts by the connecting carriers and carried in cuts either to the mill, if there is, say, 10 carloads of pulpwood, or if it is a cut of cars going to various indus-

tries, then the Terminal Railway has to classify them in [fol. 54] its classification yard there and then take them to the country?

A. That is right, yes, sir.

Mr. Rives: We want to offer as exhibits to the deposition of the witness Irvine these three maps which have heretofore been marked for identification as Exhibits 1, 2 and 3.

Q. How many diesel locomotives does the Terminal Railway of the Alabama State Docks Possess, Mr. Irvine?

A. Seven.

Q. Now generally the Terminal Railway—and when I refer to Terminal Railway hereafter I am referring to the Terminal Railway of the Alabama State Docks Department—uses railroad cars of foreign railroads, does it not?

A. Yes, sir.

Q. But the Terminal Railway does have some cars of its own?

A. Yes, sir.

Q. What type cars are those, Mr. Irvine?

A. Boxcars.

Q. It uses its own cars primarily for intra-plant servicing, does it not?

A. Yes, sir.

Q. Does the Terminal Railway have any locomotives cranes that it uses for any purposes such as rerailing a car that gets off the track or diesel locomotives that might get on the ground?

A. All of the crane equipment is owned by the Docks and not in the Terminal Railway account.

Q. The Terminal Railway doesn't have any cranes of its own?

A. No, sir.

[fol. 55] Q. How many persons are in the employment of the Terminal Railway of the Alabama State Docks Department?

A. A hundred and thirty.

Q. You are the general manager, but do you have somebody under you that is also in a supervisory capacity?

A. Yes, sir.

Q. Who is that?

A. Mr. Anthony Wallace.

Q. What is the title of his position?

A. Terminal Superintendent and General Yard Master.

Q. Now next under Mr. Wallace as Superintendent and General Yard Master, do you have yard masters?

A. Yes, sir.

Q. How many yard masters?

A. Four.

Q. Do you have a relief yard master?

A. Well, a relief yard master, yes,

Q. In addition to the ones you have just mentioned?

A. That is right.

Q. Do you have assistant yard masters?

A. No, we have clerks. They are not classified as assistant yard masters.

Q. Well, I mean, do you have extra yard masters?

A. An extra yard master would be a foreman who would be assigned temporary duty as assistant yard master.

Q. You refer to an engine foreman?

A. That is an engine foreman.

Q. That could work as a yard master?

A. That could work as a yard master.

Q. All right, how many engine foremen do you have, approximately?

[fol. 56] A. Offhand, 12, I will say.

Q. How many switchmen?

A. Well, it would be—there is probably 30 switchmen.

Q. How many locomotive engineers, approximately?

A. Oh, there is 18, I suppose, that are qualified.

Q. Does that include the firemen?

A. It would go into—you see, when a man is—when we don't use but 10 engines, the man who is qualified as an engineer, he would work as a fireman, according to the seniority.

Q. How many engineers and firemen do you have, approximately?

A. Well, the roster has got about 40 people on it, I think. That includes engineers, firemen and all of them. They all work on a seniority basis and have a dual classification.

Q. I understand that a fireman can work as an engineer, and if there is not enough work for him to work as an engineer, he can drop back and work as a fireman.

A. Correct.

Q. There are about 40 men in that classification?

A. Approximately.

Q. Does the Terminal Railway have car inspectors?

A. Yes, sir.

Q. How many car inspectors, approximately?

A. About seven.

Q. Does the Terminal Railway have machinists?

A. Yes, sir.

Q. Do you know how many machinists?

A. Five or six.

Q. Electricians?

A. Two, I think.

Q. Boilermakers?

A. Two, I believe, of those.

[fol. 57] Q. Now the car inspectors and the machinists, they are in the mechanical department, aren't they, of the Terminal Railway?

A. Yes, sir.

Q. Then do you have employees of the Terminal Railway in the maintenance of way department that maintain the trackage?

A. Yes, sir.

Q. About how many employees in the maintenance of way department?

A. Forty-two, I think.

Q. When the Terminal Railway has possession of a foreign car—and when I refer to a foreign car I mean of another railroad like the Louisville & Nashville Railroad Company—under the rules and regulations of the Association of American Railroads is a charge imposed against the Terminal Railway in favor of, say, the owner of a car, like the L. & N. Railroad Company for the per day use of that car?

A. Yes, sir.

Q. What is the charge per day for a foreign car in the custody of the Terminal Railway?

A. It varies, but I think it is \$2.28 now.

Q. But now since the Terminal Railway, in delivering cars to these various industries and delivering them to the docks, are rendering a switching service to the railroad



for which the railroad pays a charge, is there any reimbursement to the Terminal Railway for this car usage?

A. Yes, sir.

Q. In other words, the Terminal Railway, if it had an L. & N. car for three days; it would have to pay the L. & N. for three days' use of that car. Is that right?

A. That is right.

[fol. 58] Q. But since the Terminal Railway is rendering a switching service for the L. & N. in delivering that car to the industry or to the docks, they in turn reimburse the Terminal Railway for that charge, do they not? That rental?

A. I might differentiate you—you have a switching charge, we will say—I think it is \$10.89 for a Zone 1 switching. We are reimbursed by the line haul carrier for the average number of days cars are detained on the track. Right at the present time detention is, I think, 2.83 days in which they pay us that amount of money in addition to switching for the service we have rendered. The amount accounted for payment of rent and for use of the car is on a basis of adjustment every periodic time to maintain no earning for any question of the number of days we handle the car.

Q. The primary reason for the railroads reimbursing the Terminal Railway for some of these car use charges is because the Terminal Railway has rendered a switching service to that railroad with that car. Is that right?

A. Yes; the railroads pay us what it costs to switch, and they eliminate what the car rental is. They don't pay us for a car rental. We—

Q. You have to pay that?

A. Well, they pay us. I might say this: You pay for cars to 42 different railroads, and the line haul carrier pays us that amount that we pay these 42 carriers.

Q. You have the same general arrangement with all the railroads, do you not?

A. That is right.

Q. Now, Mr. Irvine, you were subpoenaed to bring to this hearing a book of the operating rules governing Terminal Railway employees, and I believe you brought this book here, did you not?

A. Well, it is here. I presented it. Yes, I brought it.  
[fol. 59] Q. Is that the book of operating rules in force and effect on the Terminal Railway of the Alabama State Docks Department?

A. Yes.

Mr. Rives: We want this in evidence As Exhibit 4 to the deposition of the witness Irvine.

(The reporter so marked the document.)

Q. Now, Mr. Irvine, you were asked to bring the work schedules or working agreements between the Terminal Railway of the Alabama State Docks Department and the various railroad brotherhoods. Now what schedules or working agreements have you brought here to the hearing?

A. Well, there is the Locomotive Engineer Agreement.

Mr. Rives: All right, we will have that marked as Exhibit 5 to your deposition.

(The reporter so marked the document.)

Q. What is the next one, Mr. Irvine?

A. We have an agreement between the Engineers, Firemen and Yardmen.

Mr. Rives: We ask that that one be marked Exhibit 6.

(The reporter so marked the document.)

Q. All right, do you have another?

A. We have the agreement of the Carmen, Machinists and Boilermakers.

[fol. 60] Mr. Rives: We ask that that be marked as Exhibit 7 to the deposition of the witness Irvine.

(The reporter so marked document.)

Q. Do you have another?

A. I have an agreement with the Railway and Steamship Clerks and Freight Handlers.

Mr. Rives: All right, we ask that this be introduced as Exhibit 8 to the deposition—

Mr. Darby: You are going to have Mr. Hubbard make copies of those and return the originals to us, because those are our originals on these—the paper ones; not the books.

Mr. Rives: You haven't got another mimeographed copy of them?

Mr. Darby: No, sir, we don't.

Mr. Rives: Well, we will now stipulate that in any case where it is mutually agreeable we can substitute a photostat for the original and the photostat will be treated the same as if it was an original.

Mr. Darby: That is agreeable to us.

[fol. 61] Mr. Rives: There will be no objection on the ground that it is a photostat rather than the original?

Mr. Darby: None whatsoever. You have offered the original, but we can't give it to you because it is our only copy.

Mr. Rives: All right, let's mark this agreement with the Clerks as Exhibit 8, and there is a sheet in there that can be marked 8-A, this sheet right here:

(The reporter marked the documents as indicated.)

Q. Do you have another?

A. We have the agreement with the Brotherhood of Maintenance and Way Employees.

Mr. Rives: We ask that that be marked as Exhibit 9 and considered as an exhibit to the deposition of the witness Irvine.

(The reporter so marked the document.)

Q. To the best of your knowledge, Mr. Irvine, does this represent all of the schedules and working agreements between the various railroad brotherhoods and the Terminal Railway?

A. Yes, sir.

Q. Mr. Irvine, if there is an accident in the operations of the Terminal Railway of the Alabama State Docks Department in which an employee is injured and because of the injury he is off duty more than 72 hours, is any report [fol. 62] made by the Terminal Railway of the Alabama

State Docks Department on that personal injury to the Interstate Commerce Commission?

A. Yes, sir.

Q. Who makes out that report and forwards it to the Interstate Commerce Commission?

A. The Secretary or the Auditor of the Terminal Railway.

Q. Who would that be?

A. Mr. Allum.

Q. Now I believe that matter of 72 hours has recently been reduced to about 24 hours, hasn't it? Or do you know about that?

A. I don't know. The report—immediate report—we make a monthly report, but now to the Interstate Commerce Commission on immediate reports, I am not posted on that at all.

Q. But monthly you do report—?

A. Monthly we do make a regular report.

Q. —to the Interstate Commerce Commission where injuries result in a man being off more than 72 hours?

A. That is right.

Mr. Irvine: Thank you, Mr. Irvine, and I don't think it will be necessary to take up the time of Mr. Wallace or Mr. Scott. I think Mr. Irvine is sufficiently familiar with the operations and has covered it to such an extent that it is not necessary to take up any further time on that; so we won't examine Mr. Wallace or Mr. Scott, and as far as I am concerned we will excuse all three of them.

Mr. Darby: I am going to ask a few questions of Mr. Irvine. Do you want to excuse them now, or do you want to wait until after I have finished questioning Mr. Irvine? [fol. 63] Mr. Rives: Well, we had better wait, because you may bring out something Mr. Irvine doesn't know.

Cross examination.

By Mr. Darby:

Q. Mr. Irvine, does the Terminal Railway of the Alabama State Docks have a separate bank account?

A. No, sir.

Q. How many bank accounts do you have at the Alabama State Docks Department?

A. In the account of the State Docks there is money in the three banks, the American and the First National Bank and the Merchants.

Q. But they are all accounts of the Alabama State Docks Department?

A. Correct.

Q. In that name?

A. Yes, sir.

Q. Does each division or construction unit of the State's facilities known as the Alabama State Docks Department maintain a separate account for depreciation and income purposes in the Treasurer's Department of the Alabama State Docks Department?

A. The accounting is made separately.

Q. That is, the income and the receipts and the expenses attributable to a particular operation such as the Terminal Railway or the Grain Elevator are kept separately so you can see what that facility is doing?

A. Yes, and it is compulsory in view of the bond issue requirements that require separate accounting.

Q. And that is pursuant to the Acts of the Legislature establishing the Alabama State Docks Department?

A. Yes, sir.

[fol. 64] Q. Now the joint interchange yard that is referred to on these various maps—and let me refer to some particular one of them so we will have it. I am referring now to Exhibit No. 2, and I am directing your attention to the joint interchange which is north of the L. & N. yards. Who is it that owns the physical property on which those tracks sit?

A. State Docks.

Q. And is that the property of the State of Alabama?

A. The State of Alabama.

Q. And who is it that owns the rails in that interchange yard?

A. The State Docks.

Q. Mr. Irvine, I hand you a contract—let me let these gentlemen see it, because they haven't seen it.

(Mr. Darby handed a document to Messrs. Rives and Conway.)

Q. Mr. Irvine, is that the original agreement between the State and the Hollingsworth and Whitney on the establishment of the connection between the Terminal Railway and the Hollingsworth and Whitney?

A. Yes, that is correct.

Q. What is that company known as today?

A. Scott Paper Company.

Mr. Darby: I would like to offer that as Defendants' Exhibit 1 to Mr. Irvine's deposition.

(The reporter marked the document as indicated.)

Mr. Darby: That is all I am going to ask him.

[fol. 65] Re-direct examination.

By Mr. Rives:

Q. Mr. Irvine, the operations of the Terminal Railway of the Alabama State Docks Department are kept separately from the operations of the other departments of the Alabama State Docks Department for bookkeeping and accounting purposes, are they not?

A. Under the service license of the ICC you are required to keep accounts according to their regulations. We keep a set of accounts to comply with their distribution regulations, and as far as the State Docks accounts, there is a separate State Docks accounting, as there is for the Docks Department, the Cold Storage Plant, Bulk Handling Plant, the Grain Elevator—

Q. And the Terminal Railway?

A. And the Terminal Railway. Now that is not only by reason of the bond—for the bond holders, but it is in keeping with ordinary business practices, to keep your accounts so separated and designated that you know whether you are making money in this particular activity.

Q. That is, whether the Terminal Railway Department is making money or losing money, is it not?

A. That is right.



Q. Now you have brought to the hearing these work schedules and work agreements between the Terminal Railway and the various railroad brotherhoods. If there is to be a change in any of those schedules or work agreements, usually the change is reduced to writing and someone signs it for the railroad brotherhood concerned and somebody signs it for the Terminal Railway, do they not?

A. Yes, sir.

Q. Do you sign those changes on behalf of the Terminal Railway?

[fol. 66] A. Yes, sir. My recollection is that most of them—there have been some that have been signed by the Director.

Q. The general rule is that you sign them? The exceptions would be for anybody else to sign them. Is that right? For the Terminal Railway?

A. Yes. It is signed subject to the Director's approval. It is a matter of convenience and understanding that I have been the one that has taken—has signed probably most of them.

Q. What about if there is any change in any of the operating rules?

A. I would sign those. However, any director—if he said he wanted to—if he said he wanted to, or, "You don't sign them; I will sign them." But there is considerable technicality and hurry, and I have signed some of them. Mr. McGowin signed this.

Q. But generally speaking, if there is any change herein this book of rules governing Terminal Railway employees, which is Exhibit 4 to your deposition, you would be the one to sign that on behalf of the Terminal Railway, generally speaking?

A. Yes, sir. It is accepted by the group of people that—officials for the union and—but it hasn't been strict contractual formality.

Q. Well, they come in and discuss it with you, and if you all can agree you sign for the Terminal Railway and somebody signs for the union?

A. Correct.

Mr. Rives: I think that is all, Mr. Irvine.

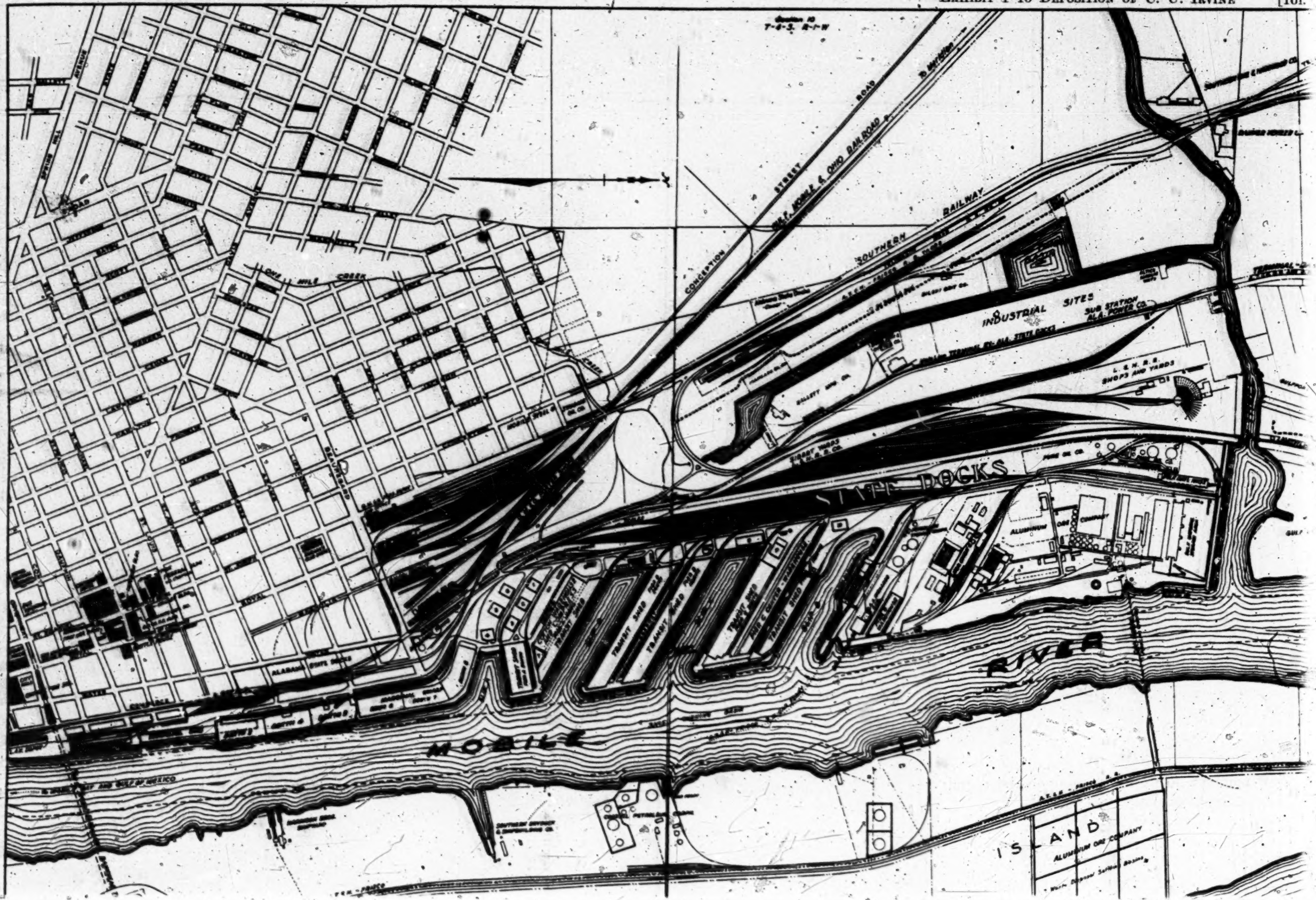
[fol. 67].      Re-cross examination.

By Mr. Darby:

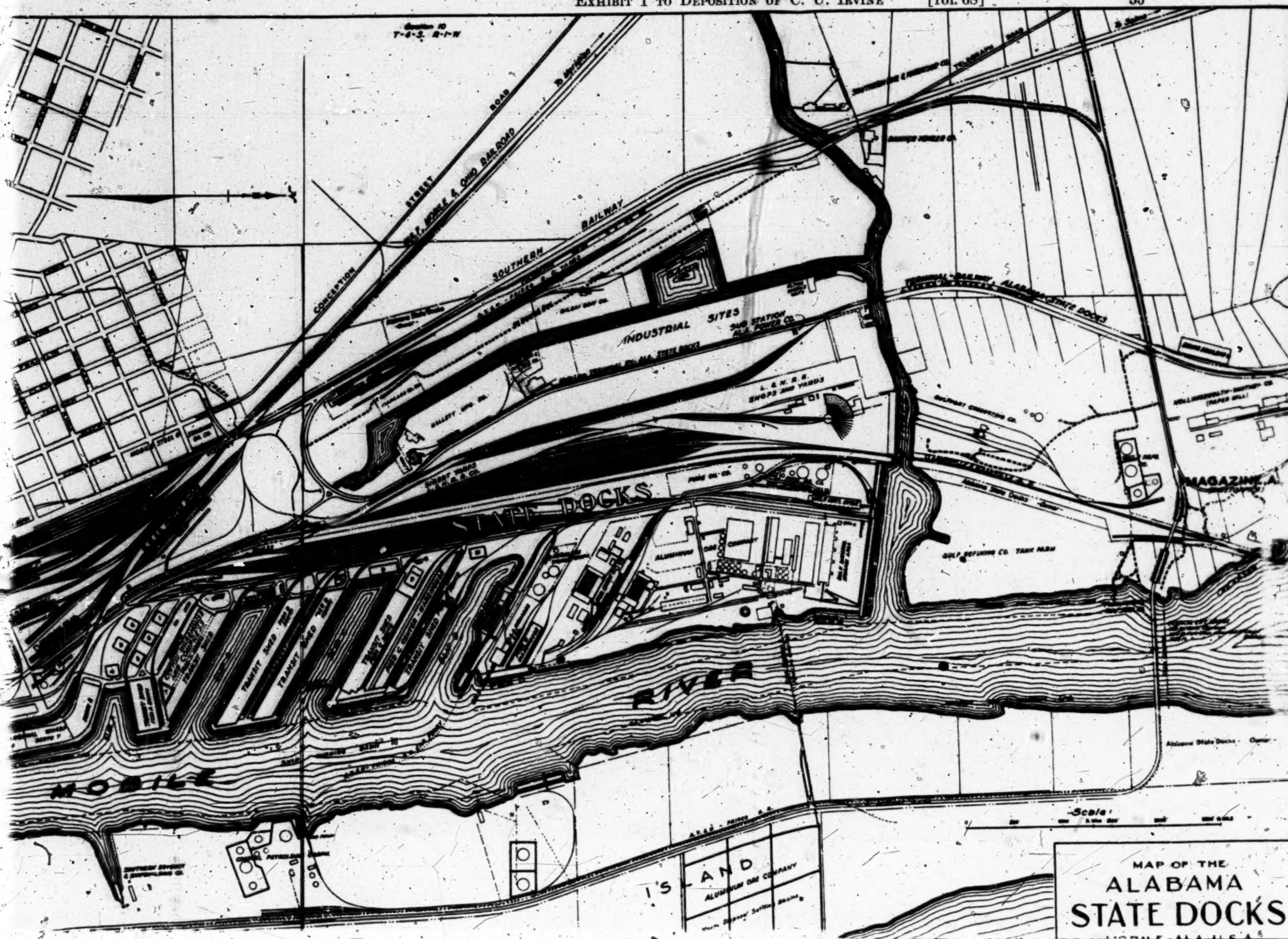
Q. Mr. Irvine, in connection with the collective bargaining agreements, do you always obtain first the approval of whoever the Director might be before entering into one of them, particularly if it involves any wage or other increases?

A. No wage increase of any nature is approved without the Director's authorization. He is the only one that I know of that is authorized to pay out money for the State. The Treasurer wouldn't pay out any money unless he has the proper authority from the Director.

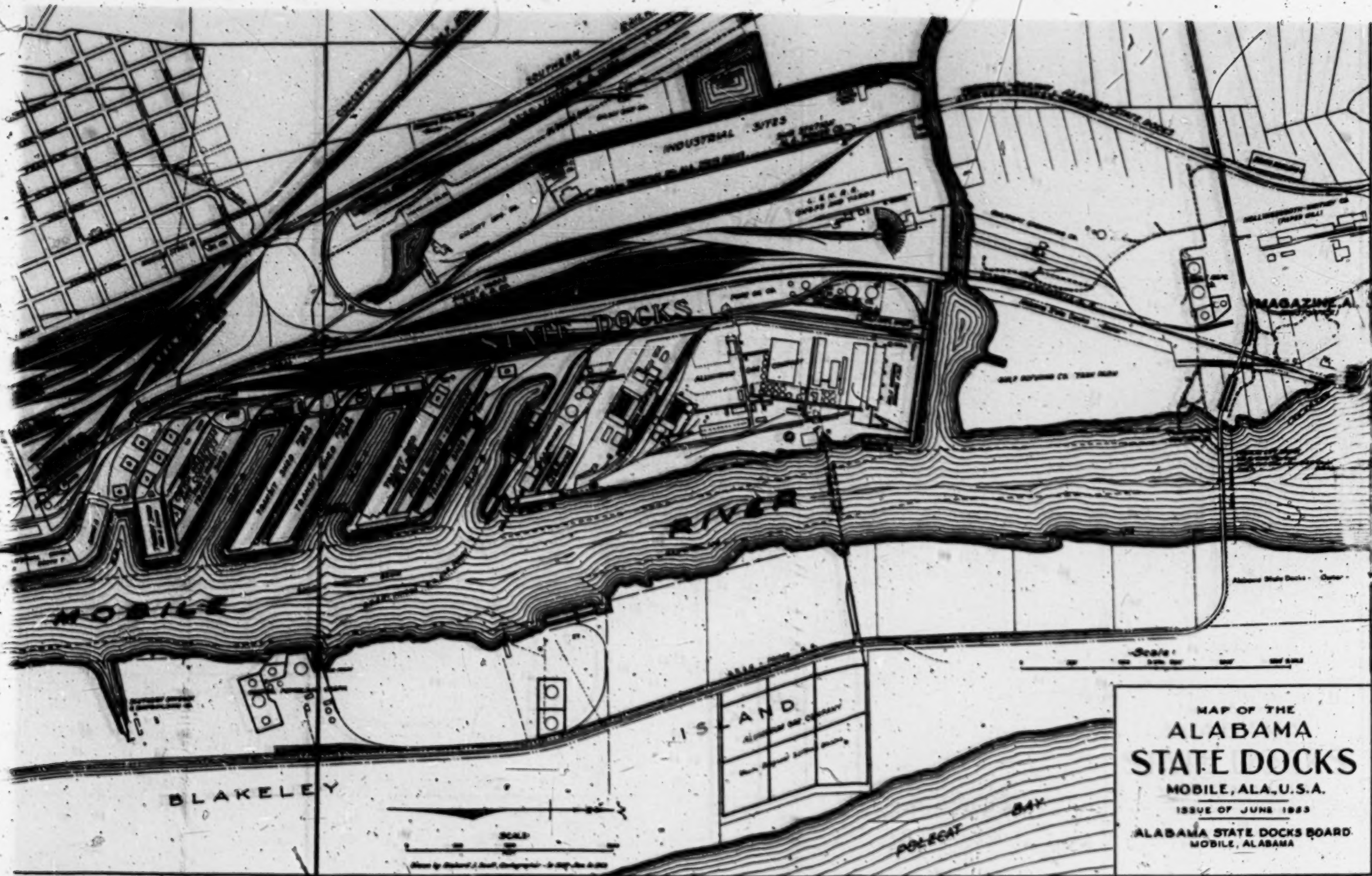
Mr. Darby: That is all.







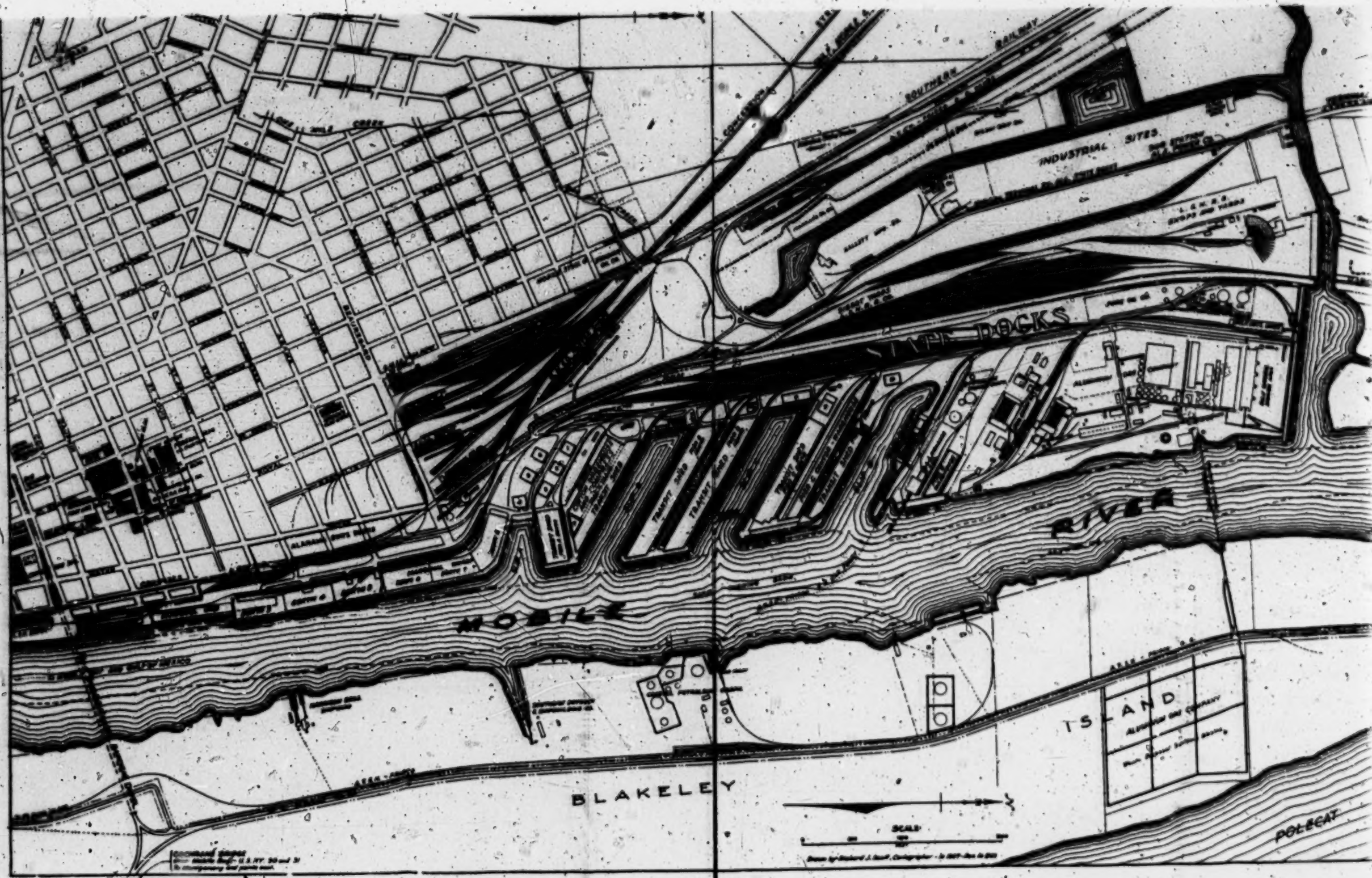




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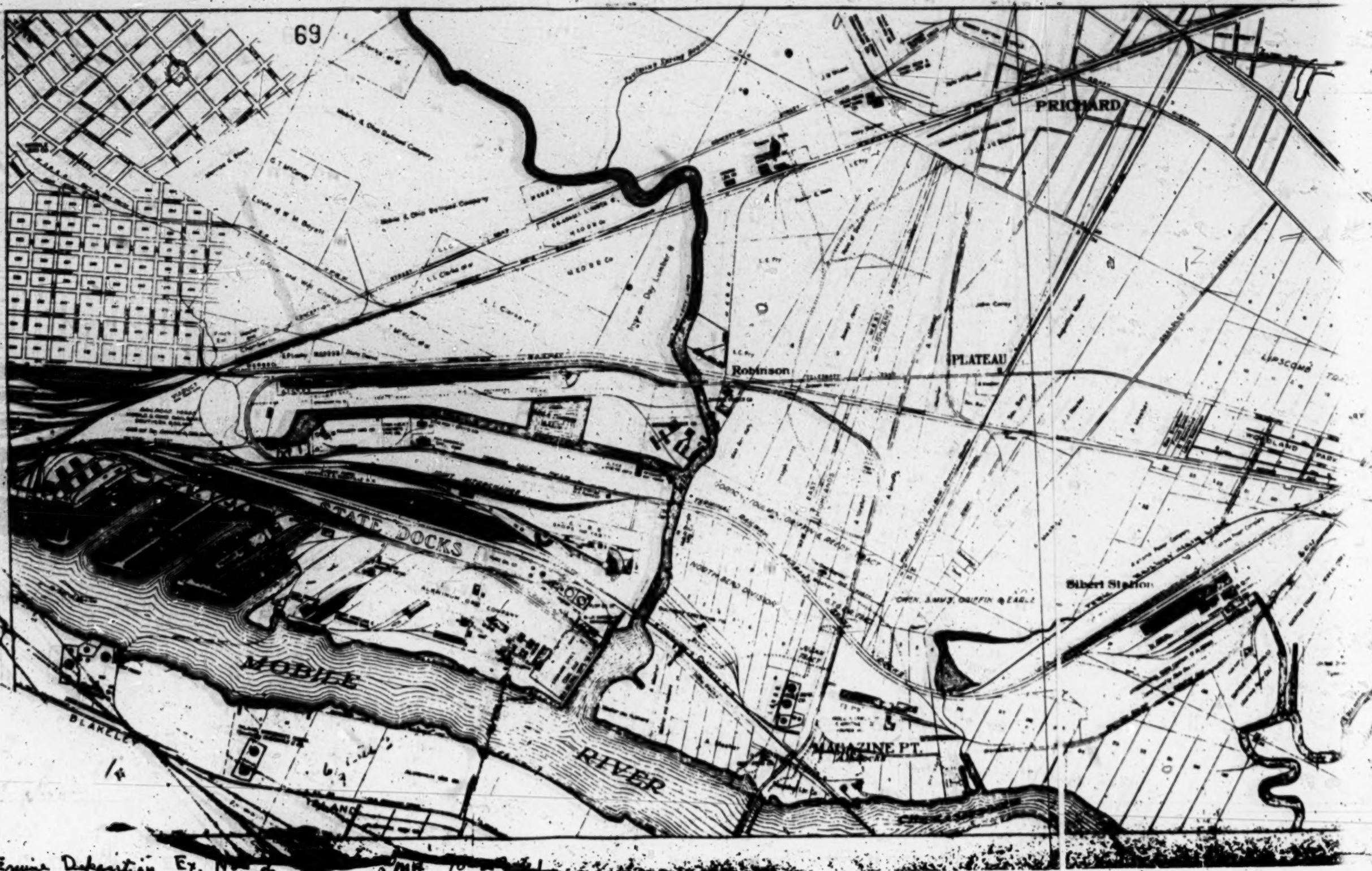




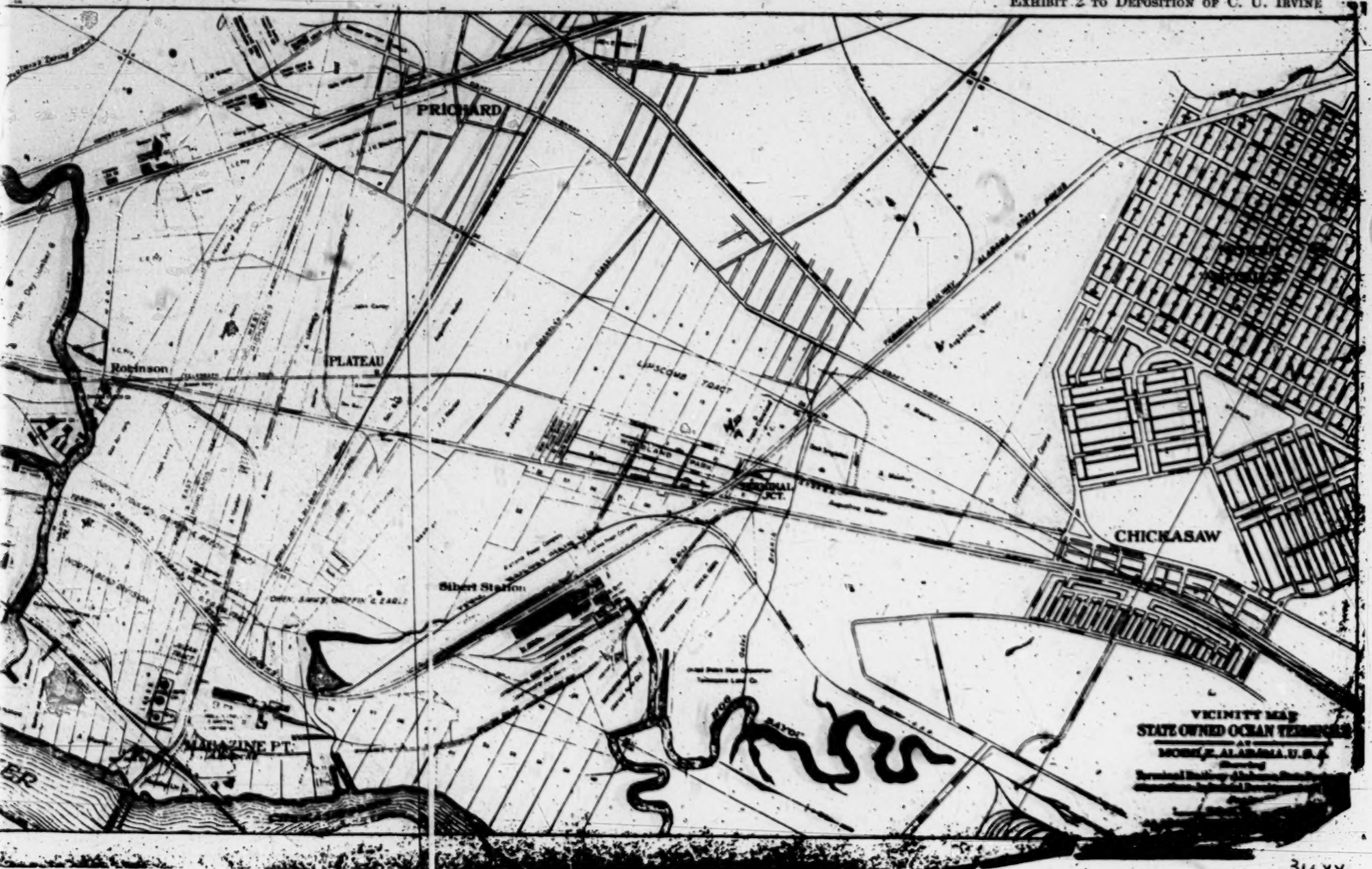
Engine Deposition Ex. No. 1

Exhibit 10-2761

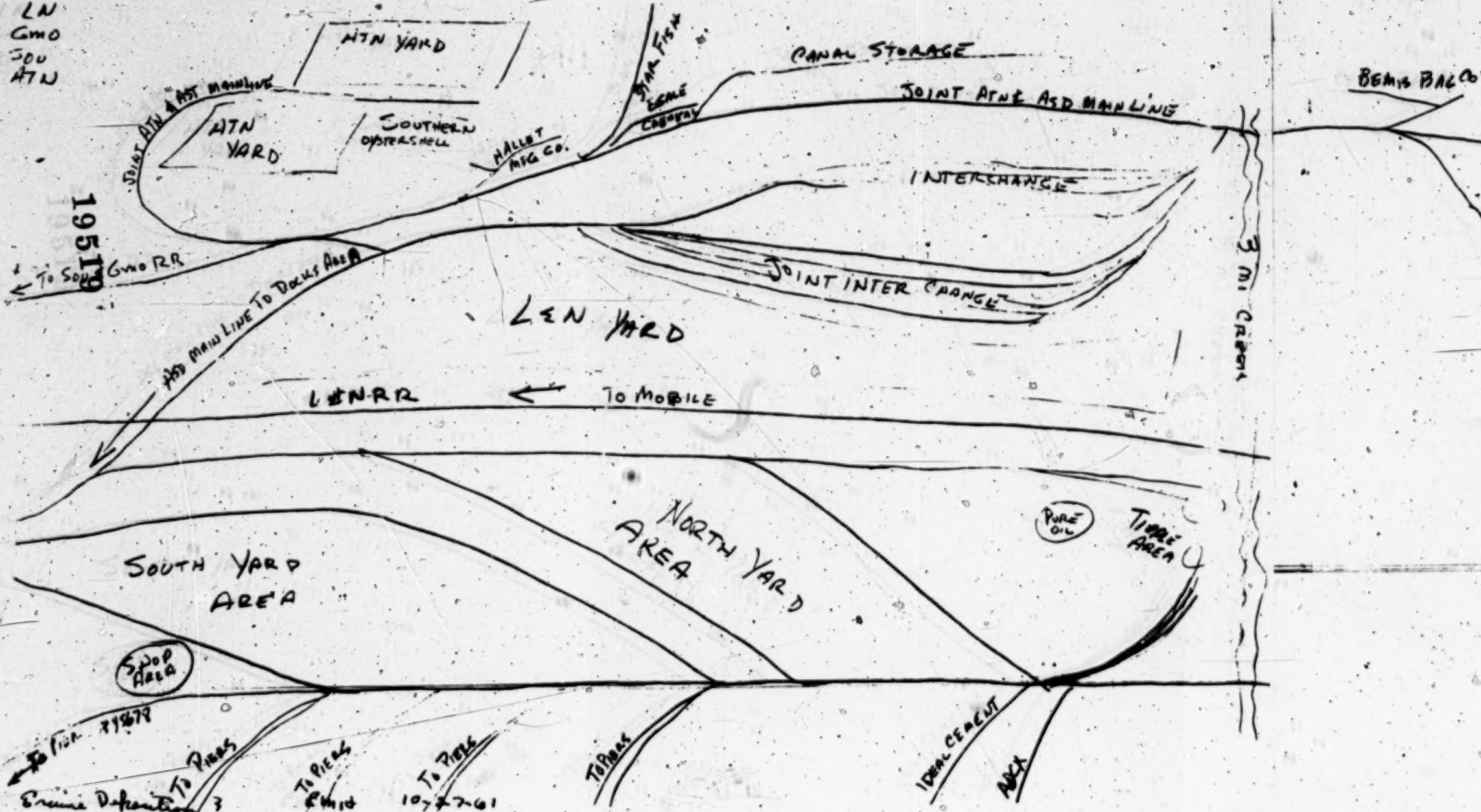








LN  
GMO  
SOU  
ATN



1951

TO SOU GMO RR

TO SOU GMO RR

LEN RR

TO MOBILE

SWOP AREA

TO PIER 3

TO PIER 4

TO PIER 5

TO PIER 6

TO PIER 7

TO PIER 8

TO PIER 9



BRIDGE  
TRAM TRACK

TO MAINE

To Bldg

SOUTHERN RR

LAGE

BINT AINE ASD MAINLINE

Bemis Bldg

JOINT AINE ASD MAINLINE

INTERCHANGE

INTERNATIONAL  
PAPER CO

SCOTT  
TAPER  
CO

CARAGE

3 mi Capon

AMERICAN  
ALYND CO

PURE  
OIL

TIME  
AREA

GULF SAFF YARD

ALYND  
CO

IDEALMENT  
ACK

[fol. 71]

## EXHIBIT 4 TO DEPOSITION OF C. U. IRVINE

1308. Employees must not make any statement, either oral or written, concerning any accident, claim or suit in which the company is, or may be involved, to any person other than authorized representative of the railway, without permission, Except in cases arising under the Federal Employers' Liability Act, otherwise known as "an act relating to the liability of common carriers by railroad to their employees in certain cases."

(The management has no desire to prevent employees from voluntarily furnishing information to a person in interest as to the facts incident to the injury to or death of any Employee whose case arose under this Act. However, employees are advised they cannot be compelled to furnish such information, except by subpoena. It is suggested that if no information is given there is no possibility of embarrassment to an employee through his information being misquoted or misinterpreted. Information furnished should be confined to personal knowledge of the facts, and not from information taken from the files or records, or other privileged or confidential reports of the company. It is suggested, when such information is requested that employees communicate with superintendent, claim agent or company attorney handling the case, to ascertain if it is actually under said Act and whether the person requesting such information is a person in interest.)

[fol. 72] IN UNITED STATES DISTRICT COURT

ORDER QUASHING SERVICE AND DISMISSING ACTION—  
December 29, 1961

This cause having come on to be heard in open Court on the motion to quash return of service of summons or to dismiss the action.

Arguments by Attorneys of Record were heard and the motion was taken under submission by the Court.

Now, after consideration thereof,

It Is Ordered by the Court that the motion of the Sovereign State of Alabama to quash return of service of summons be, and the same hereby is, Granted, and

It Is Further Ordered by the Court that the motion of the Sovereign State of Alabama to dismiss the action be, and the same hereby is, Granted, with costs herein taxed against the Plaintiff.

Made at Mobile, Alabama, this the 29th day of December A.D., 1961.

Daniel H. Thomas, United States District Judge.

Recitation:

"Orders identical to those entered on December 29, 1961 and January 22, 1962, in Civil Action Number 2551, were entered in Civil Actions Numbered 2552, 2553, 2588 and 2679."

[fol 73] IN UNITED STATES DISTRICT COURT

CORRECTED ORDER—January 22, 1962

For good cause shown, the order entered herein on the 29th day of December, 1961 is revised to correct errors therein arising from oversight or omission, so as to read as follows:

This cause having come on to be heard in open Court on the motion to quash return of service of summons or to dismiss the action, and the same having been submitted upon the verified motion, affidavits of Honorable John Patterson, William J. Colley, Ralph P. Eagerton, and C. U. Ervine filed in support thereof, and the depositions of Earl M. McGowin and C. U. Ervine, together with exhibits thereto.

Arguments by Attorneys of Record were heard and the motion was taken under submission by the Court.



Now, after consideration thereof,

It Is Ordered by the Court that the motion of the Sovereign State of Alabama to quash return of service of summons be, and the same hereby is, Granted, and

It Is Further Ordered by the Court that the motion of the Sovereign State of Alabama to dismiss the action be, and the same hereby is, Granted, with costs herein taxed against the plaintiff.

Made at Mobile, Alabama, this 22nd day of January, A.D., 1962.

Daniel H. Thomas, United States District Judge.

[fol. 74] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—January 24, 1962

Notice is hereby given that R. B. Parden, Plaintiff in the above styled cause, hereby appeals to the United States Court of Appeals for the Fifth Circuit, from the order entered herein on the 29th day of December, 1961, as corrected by the order entered herein on the 22nd day of January, 1962, by which order or orders this action was dismissed, and the return of service of summons was quashed.

This the 24 day of January, 1962.

Al G. Rives, T. M. Conway, Jr., Attorneys for Plaintiff.

1007 Massey Building, Birmingham, Alabama.

Rives, Peterson, Pettus & Conway, 1007 Massey Building, Birmingham, Alabama, Of Counsel for Plaintiff.

Recitation:

"Notices of Appeal identical to that filed in Civil Action Numbered 2551 were filed in Civil Actions Numbered 2552, 2553, 2588 and 2679 on January 25, 1962."

[fol. 75] IN UNITED STATES DISTRICT COURT

MOTION TO CONSOLIDATE CASES ON APPEAL—  
Filed January 29, 1962

Come the plaintiffs in the above styled causes, separately and severally, and show unto the Court that they have separately given notices of appeal to the United States Court of Appeals for the Fifth Circuit, such notices having been filed on the 25th day of January, 1962; that the issues in these cases on appeal are the same, or so substantially similar that the five cases can readily be decided together; that the preparation of five separate records would be unduly expensive and would render the handling of the appeals by the United States Court of Appeals for the Fifth Circuit cumbersome and unduly burdensome.

Wherefore, Premises Considered, plaintiffs, separately and severally, move the Court to enter an order consolidating these cases on appeal, and directing the Clerk to submit one consolidated record to the United States Court of Appeals for the Fifth Circuit.

Al G. Rives, T. M. Conway, Jr., and Rives, Peterson, Pettus & Conway, By T. M. Conway, Jr.,  
Attorneys for Plaintiffs.

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[fol. 76] IN UNITED STATES DISTRICT COURT

ORDER CONSOLIDATING CASES ON APPEAL—  
January 29, 1962

Upon motion of the plaintiffs in the above causes, and for good cause shown, the Court is of the opinion that the above cases should be consolidated on appeal, it is hereby Ordered that the above styled cases be and the same hereby are consolidated for purposes of the appeals taken by the plaintiffs by notices of appeal filed on the 25th day of January, 1962, and the Clerk is directed to submit one consolidated record to the United States Court of Appeals for the Fifth Circuit.

Made at Mobile, Alabama, this the 29th day of January,  
A.D., 1962.

Daniel H. Thomas, United States District Judge.

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[fol. 77] IN UNITED STATES DISTRICT COURT

Civil Action No. 2552

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R. B. PARDEN, Plaintiff,

VS..

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on June 3, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, Defendants.

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COMPLAINT—Filed February 23, 1961

Comes the plaintiff in the above styled cause and brings this action against the defendants Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on June 3, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, and for cause of action against the said defendants, alleges as follows:

I.

1. That the plaintiff R. B. Parden is a resident and citizen of Mobile County in the State of Alabama, his address being 1005 Oak Street, Mobile, Alabama.

[fol. 78]

## II.

1. That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State-Docks are common carriers by railroad and as such common carriers by railroad have at all times herein mentioned been engaged in the business of operating a railroad for the transportation of freight for hire in commerce between the several states of the United States of America and in foreign commerce.

2. (a) That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks are the only departments within the Government of the State of Alabama which operate solely from the money they make themselves.

(b) That the said defendants get no legislative appropriation, and

(c) That the said defendants operate as a self-sustaining business, generating their own funds.

## III.

1. That the jurisdiction of the United States District Court for the Southern Division of the Southern District of Alabama is based upon an Act of the Congress of the United States known as the Federal Employers Liability Act, Title 45, U.S.C.A. Section 51 et seq.

## IV.

1. That the defendants as such common carriers by railroad as described in Paragraph II, 1 of this complaint and its employees have at all times herein mentioned been [fol. 79] subject to the provisions of the aforesaid Federal Employers Liability Act, an Act of the Congress of the United States enacted for the protection and benefit of employees of common carriers by railroad engaged in such aforesaid interstate and foreign commerce who are injured or killed in line of duty.

## V.

## First Cause of Action.

For plaintiff's first cause of action, plaintiff adopts the allegations of Paragraphs I, II, III and IV of this complaint and adds thereto the following allegations, viz:

Plaintiff avers that on, to-wit, June 3, 1958 he was employed by the defendants as a railroad switchman at Mobile, Alabama and that a part of his duties as such railroad switchman for the defendants was in furtherance of such aforesaid interstate or foreign commerce or directly or closely and substantially affected such commerce and plaintiff avers that on said date while he was attempting to throw a railroad switch on a track known as the "Hopper Track" at the place of business of the Southern Oyster Shell Company in Mobile County, Alabama and while engaged in and about the performance of his work as such railroad switchman for the defendants, his back was injured and he was injured internally and was otherwise injured and a previous condition was aggravated, all to such extent that plaintiff was caused to be disabled and made sick and sore and caused to suffer physical pain and mental anguish and caused to lose wages from his employment as a railroad switchman and plaintiff's power and capacity to work and earn money was impaired; and plaintiff [fol. 80] tiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the defendants in that the defendants negligently failed to exercise reasonable care to furnish or maintain said railroad switch in a reasonably safe and suitable condition for its use by the plaintiff in the performance of his said work for the defendants.

## VI.

## Second Cause of Action.

For plaintiff's second cause of action, plaintiff adopts the allegations of Paragraph V of this complaint except that in lieu of the following allegations in said Paragraph V, viz:



"Plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the defendants in that the defendants negligently failed to exercise reasonable care to furnish or maintain said railroad switch in a reasonably safe and suitable condition for its use by the plaintiffs in the performance of his said work for the defendants."

plaintiff inserts the following allegations, viz:

"plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the defendants in that the defendants negligently failed to exercise reasonable care to furnish or maintain plaintiff a reasonably safe place to perform his aforesaid work for the defendants."

[fol. 81]

## VII.

### Third Cause of Action.

For plaintiff's third cause of action, plaintiff adopts the allegations of Paragraph V of this complaint except that in lieu of the following allegations in said Paragraph V, viz:

"plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the defendants in that the defendants negligently failed to exercise reasonable care to furnish or maintain said railroad switch in a reasonably safe and suitable condition for its use by the plaintiff in the performance of his said work for the defendants."

plaintiff inserts the following allegations, viz: •

"plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the officers, agents or employees of the defendants while acting within the line and scope of their employment by the defendants or by reason of a defect or insufficiency due to the negligence of the defendants in said railroad switch, track, roadbed, machinery, appliances or other equipment."



## VIII.

Wherefore, plaintiff prays judgment against the defendants under each of the aforesaid causes of action in the amount of Five Thousand (\$5,000.00) Dollars.

[fol. 82]

## IX.

Plaintiff demands a jury trial.

Rives, Peterson, Pettus & Conway, By Al G. Rives,  
Attorneys for Plaintiff.

Tenth Floor, Massey Building, Birmingham 3, Alabama;  
Telephone ALpine 1-3275.

Note to United States Marshal:

Summons and complaint in this action should be served on Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks, etc. by leaving a copy thereof with the Honorable Earl M. McGowin, Director of the said Terminal Railway of the Alabama State Docks Department.

Filed Feb. 23, 1961.

[fol. 83] IN UNITED STATES DISTRICT COURT  
Civil Action File No. 2552

R. B. PARDEN, Plaintiff,

v.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, etc., Defendant.

SUMMONS IN A CIVIL ACTION—February 24, 1961

To the above named Defendants:

You are hereby summoned and required to serve upon Mr. A. G. Rives, Attorney, Rives, Peterson, Pettus & Con-

way, plaintiff's attorney, whose address is: Tenth Floor, Massey Building, Birmingham 3, Alabama, an answer to the complaint which is herewith served upon you, within (Twenty) 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

William J. O'Connor, Clerk of Court, Minnie Pearl Cox, Deputy Clerk.

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 84]      Return of Service of Writ.

I hereby certify and return, that on the 24th day of Feb. 1961, I received this summons and served it together with the complaint herein as follows: On Feb. 24th, 1961 at Mobile, Ala. served copy of each on C. U. Irvine, General Manager of Operations, Terminal Railway Of The Alabama State Docks Department; and Terminal Railway of Alabama State Docks, etc.

J. L. May, United States Marshal.

By W. F. Armstrong, Deputy United States Marshal.

Marshal's Fees

Travel	\$ .40
Service	2.00
	<hr/>
	2.40

Filed Feb. 27, 1961.

Motion to Quash Return of Service of Summons or to Dismiss Action, Civil Action No. 2552;

Affidavit of C. U. Irvine, Civil Action No. 2552;

Affidavit of Ralph P. Eagerton, Civil Action No. 2552;

Affidavit of William J. Colley, Civil Action No. 2552;

Affidavit of John Patterson, Civil Action No. 2552;

Order Quashing Service and Dismissing Action, Civil Action No. 2552;

[fol. 85] Corrected Order, Civil Action No. 2552;

Notice of Appeal, Civil Action No. 2552;

Omitted from the Printed Record pursuant to Appellant's Designation as to Printing Record heretofore copied at page 1.

IN UNITED STATES DISTRICT COURT

Civil Action No. 2553

OTTO DRISKELL, Plaintiff,

VS.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on July 22, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, Defendants.

COMPLAINT—Filed February 23, 1961

Comes the plaintiff in the above styled cause and brings this action against the defendants Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks, whose true and correct name [fol. 86] and legal status is otherwise unknown to the

plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on July 22, 1958 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, and for cause of action against the said defendants, alleges as follows:

### I.

1. That the plaintiff Otto Driskell is a resident and citizen of Mobile County in the State of Alabama, his address being Route 4, Box 330, Mobile, Alabama.

### II.

1. That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks are common carriers by railroad and as such common carriers by railroad have at all times herein mentioned been engaged in the business of operating a railroad for the transportation of freight for hire in commerce between the several states of the United States of America and in foreign commerce.

2. (a) That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks are the only departments within the Government of the State of Alabama which operate solely for the money they make themselves.

(b) That the said defendants get no legislative appropriation, and

[fol. 87] (c) That the said defendants operate as a self-sustaining business, generating their own funds.

### III.

1. That the jurisdiction of the United States District Court for the Southern Division of the Southern District of Alabama is based upon an Act of the Congress of the United States known as the Federal Employers Liability Act, Title 45, U.S.C.A. Section 51 et seq.

## IV.

1. That the defendants as such common carriers by railroad as described in Paragraph II, 1 of this complaint and its employees have at all times herein mentioned been subject to the provisions of the aforesaid Federal Employers Liability Act, an Act of the Congress of the United States enacted for the protection and benefit of employees of common carriers by railroad engaged in such aforesaid interstate and foreign commerce who are injured or killed in line of duty.

## V.

## First Cause of Action.

For plaintiff's first cause of action, plaintiff adopts the allegations of Paragraphs I, II, III and IV of this complaint and adds thereto the following allegations, viz:

Plaintiff avers that on, to-wit, July 22, 1958 he was employed by the defendants as a railroad switchman at Mobile, Alabama and that a part of plaintiff's duties as such railroad switchman for the defendants was in furtherance of [fol. 88] such aforesaid interstate or foreign commerce or directly or closely and substantially affected such commerce and plaintiff avers that on said date while plaintiff and other members of a switching crew of the defendants were engaged in and about the switching of railroad cars at the plant of the International Paper Company in Mobile and while plaintiff was riding on a railroad car in a cut of railroad cars that were being moved along Track 4½ at the said plant of International Paper Company in Mobile, Alabama, plaintiff was caused to be knocked off of the railroad car upon which he was riding as aforesaid by a railroad car that was standing on Track 4 at said plant of the International Paper Company and plaintiff was thereby caused to be injured in and about his hip and head and he was caused to be injured internally and was made sick and sore and caused to suffer great physical pain and mental anguish and was caused to be hospitalized and to undergo medical and surgical care and treatment and was caused to incur expense for such hospitalization and care and treatment and for medicines and was caused to lose wages from his em-



ployment and plaintiff's power and capacity to work and earn money was impaired; and plaintiff avers that he was caused to be knocked from the aforesaid moving railroad car upon which he was riding as aforesaid and he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in-whole or in part, of the negligence of the officers, agents or employees of the defendants while acting within the line and scope of their employment by the defendants or by reason of a defect or insufficiency due to the negligence of the defendants in their cars, track, roadbed, works, machinery, appliances or other equipment.

[fol. 89]

## VI.

### Second Cause of Action.

For plaintiff's second cause of action, plaintiff adopts the allegations of Paragraph V of this complaint except that in lieu of the following allegations in said Paragraph V, viz:

"and plaintiff avers that he was caused to be knocked from the aforesaid moving railroad car upon which he was riding as aforesaid and he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the officers, agents or employees of the defendants while acting within the line and scope of their employment by the defendants or by reason of a defect or insufficiency due to the negligence of the defendants in their cars, track, roadbed, works, machinery, appliances or other equipment."

plaintiff inserts the following allegations, viz:

"and plaintiff avers that he was caused to be knocked from the aforesaid moving railroad car upon which he was riding as aforesaid and he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the defendants in that the defendants negligently failed to exercise reasonable care to furnish or maintain plaintiff a reasonably safe place to perform his aforesaid work for the defendants."



## VII.

Wherefore, plaintiff prays judgment against the defendants under each of the aforesaid causes of action in the amount of Five Thousand (\$5,000.00) Dollars.

[fol. 90]

## VIII.

Plaintiff demands a jury trial.

Rives, Peterson, Pettus & Conway, By: Al G. Rives,  
Attorneys for Plaintiff.

Tenth Floor, Massey Building, Birmingham 3, Alabama,  
Telephone ALpine 1-3275.

Note to United States Marshal:

Summons and complaint in this action should be served on Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks, etc. by leaving a copy thereof with the Honorable Earl M. McGowin, Director of the said Terminal Railway of the Alabama State Docks Department.

[fol. 91]

IN UNITED STATES DISTRICT COURT

Civil Action No. 2553

OTTO DRISKELL, Plaintiff,

v.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, Etc., Defendant.

SUMMONS—February 24, 1961

To the above named Defendants:

You are hereby summoned and required to serve upon Mr. Al G. Rives, Attorney, Rives, Peterson, Pettus & Conway, plaintiff's attorney, whose address Tenth Floor, Mas-

sey Building, Birmingham 3, Alabama, an answer to the complaint which is herewith served upon you, within (Twenty) 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

William J. O'Connor, Clerk of Court.

Minnie Pearl Cox, Deputy Clerk.

(Seal)

[Seal of Court]

Note—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 92]

Return on Service of Writ.

I hereby certify and return, that on the 24th day of Feb. 1961, I received this summons and served it together with the complaint herein as follows: On Feb. 24th, 1961 at Mobile, Ala. served copy of each on C. U. Irvine, General Manager of Operations, Terminal Railway of The Alabama State Docks Department; and Terminal Railway of Alabama State Docks, etc.

J. L. May, United States Marshal.

W. F. Armstrong, Deputy United States Marshal.

Marshal's Fees

Travel	\$ .40
Service	2.00

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2.40

Filed Feb. 27, 1961.

Motion to Quash Return of Service of Summons or to Dismiss Action, Civil Action No. 2553;

Affidavit of C. U. Irvine, Civil Action No. 2553;

Affidavit of Ralph P. Eagerton, Civil Action No. 2553;

**Affidavit of William J. Colley, Civil Action No. 2553;**

**Affidavit of John Patterson, Civil Action No. 2553;**

**Order Granting Motion to Quash and Granting Motion to Dismiss Action, Civil Action No. 2553;**

**[fol. 93] Corrected Order, Civil Action No. 2553;**

**Notice of Appeal, Civil Action No. 2553;**

**Omitted from the Printed Record pursuant to Appellants' Designation as to Printing Record heretofore copied at page 1.**

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**IN UNITED STATES DISTRICT COURT**

**Civil Action No. 2588**

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**MRS. ELIZABETH W. WIGGINS and FRANK O. BURGE, JR.,**  
**who sue in their capacity as Administrators of the**  
**Estate of John Ervin Wiggins, deceased, Plaintiffs,**

**vs.**

**TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS,**  
**whose true and correct name and legal status is otherwise unknown to the plaintiffs, but who is the legal entity**  
**operating what was generally known as the Terminal**  
**Railway of the Alabama State Docks at Mobile, Alabama**  
**on November 14, 1958 and whose true and correct name**  
**and legal status will be added by amendment to the**  
**plaintiff's complaint when ascertained, Defendants.**

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**COMPLAINT—Filed April 19, 1961**

**Come the plaintiffs in the above styled cause and bring**  
**this action against the defendants Terminal Railway of**  
**the Alabama State Docks Department and Terminal Rail-**  
**[fol. 94] way of Alabama State Docks, whose true and**  
**correct name and legal status is otherwise unknown to**  
**the plaintiffs but who is the legal entity operating what**  
**was generally known as the Terminal Railway of the Ala-**

bama State Docks at Mobile, Alabama on November 14, 1958 and whose true and correct name and legal status will be added by amendment to plaintiffs' complaint when ascertained, and for cause of action against the said defendants, allege as follows:

### I.

1. That the plaintiffs, Mrs. Elizabeth W. Wiggins and Frank O. Burge, Jr., who sue in their capacity as Administrators of the estate of John Ervin Wiggins, deceased, are the personal representatives of the estate of the said John Ervin Wiggins, deceased, letters of administration upon the estate of the said deceased having been granted to the plaintiffs on the 8th day of December, 1960, by the Honorable J. Paul Meeks, Judge of the Probate Court of Jefferson County, Alabama.

### II.

1. That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks are common carriers by railroad and as such common carriers by railroad have at all times herein mentioned been engaged in the business of operating a railroad for the transportation of freight for hire in commerce between the several states of the United States of America and in foreign commerce.

2. (a) That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks are the only departments within the Government of the State of Alabama which operate solely from the money they make themselves.

(b) That the said defendants get no legislative appropriation, and

(c) That the said defendants operate as a self-sustaining business, generating their own funds.

### III.

1. That the jurisdiction of the United States District Court for the Southern Division of the Southern District

of Alabama is based upon (a) An Act of the Congress of the United States known as the Federal Employers Liability Act, Title 45, U.S.C.A. Section 51 et seq, and (b) Another Act of the Congress of the United States, namely, Title 45, U.S.C.A. Section 59.

#### IV.

1. That the defendants as such common carriers by railroad as described in Paragraph II, 1 of this complaint and their employees have at all times herein mentioned been subject to (a) The provisions of the aforesaid Federal Employers Liability Act, an Act of the Congress of the United States enacted for the protection and benefit of employees of common carriers by railroad engaged in such aforesaid interstate and foreign commerce who are injured or killed in line of duty and (b) The provisions of the aforesaid Title 45 U.S.C.A. Section 59.

[fol. 96]

#### V.

##### First Cause of Action.

For plaintiffs' first cause of action, plaintiffs adopt the allegations of Paragraphs I, II, III and IV of this complaint and add thereto the following allegations, viz.:

Plaintiffs aver that on, to-wit, November 14, 1958, plaintiffs' intestate, John Ervin Wiggins, deceased, was employed by the defendants as a railroad switchman at Mobile, Alabama and that a part of his duties as such railroad switchman for the defendants was in furtherance of such aforesaid interstate or foreign commerce or directly or closely and substantially affected such commerce and that on said date while plaintiffs' said intestate and other members of a switching crew of the defendants were engaged in moving several railroad cars with a switch engine of the defendants along Track C7 at the Alabama State Docks and while plaintiffs' said intestate was walking along a concrete platform beside said Tract C7 in the performance of his duties as such railroad switchman for the defendants, plaintiffs' said intestate fell into an unlighted opening or recess in said concrete platform beside



Tract C7, and plaintiffs' said intestate was thereby caused to be injured and damaged as follows: The bones in the right foot of plaintiffs' said intestate were broken and the ligaments, tendons, tissues, nerves and muscles thereof were torn and bruised and otherwise injured and the right foot of plaintiffs' said intestate was permanently injured and the use thereof permanently impaired and plaintiffs' said intestate was made sick and sore and caused to suffer great physical pain and mental anguish and he was caused [fol. 97] to incur expense for x-rays and medical and surgical care and treatment and he was caused to lose wages from his employment as a railroad switchman and his power and capacity to work and earn money in the future was permanently impaired; and plaintiffs aver that said injuries to plaintiffs' said intestate contributed to or hastened his death on to-wit December 13th 1939 and plaintiffs under and by virtue of the provisions of Title 45 U.S.C.A. Section 51 et seq. and the provisions of Title 45 U.S.C.A. Section 59, claim damages of the defendants for and on account of the aforesaid injuries and damages sustained by their said intestate and for the pecuniary loss sustained by Mrs. Elizabeth W. Wiggins, mother of the said John Ervin Wiggins by reason of the said injuries and death of her said son, the plaintiffs' said intestate having left no surviving widow or children, but having left a surviving mother, namely, Mrs. Elizabeth W. Wiggins, who was dependent upon her said son for support and maintenance at the time of his aforesaid injuries and death and for whose benefit this claim for damages is being maintained; and plaintiffs aver that their said intestate was caused to sustain all of his aforesaid injuries and damages and said injuries contributed to or hastened his death all as a proximate result, in whole or in part, of the negligence of the officers, agents or employees of the defendants while acting within the line and scope of their employment by the defendants or by reason of a defect or insufficiency due to the negligence of the defendants in their cars, engines, track, roadbed, works, machinery, appliances or other equipment.

## Second Cause of Action.

For plaintiff's second cause of action, plaintiffs adopt the allegations of Paragraph V of this complaint except that in lieu of the following allegations in said Paragraph V, viz:

"And plaintiffs aver that their said intestate was caused to sustain all of his aforesaid injuries and damages and said injuries contributed to or hastened his death all as a proximate result, in whole or in part, of the negligence of the officers, agents or employees of the defendants while acting within the line and scope of their employment by the defendants or by reason of a defect or insufficiency due to the negligence of the defendants in their cars, engines, track, roadbed, works, machinery, appliances or other equipment."

plaintiffs insert the following allegations, viz:

"and plaintiffs aver that their said intestate was caused to sustain all of his aforesaid injuries and damages and said injuries contributed to or hastened his death, all as a proximate result, in whole or in part of the negligence of the defendants in that the defendants negligently failed to exercise reasonable care to furnish or maintain plaintiffs' said intestate a reasonably safe place to perform his aforesaid work for the defendants."

## VII.

Wherefore, plaintiffs pray judgment against the defendants under each of the aforesaid causes of action [fol. 99] in the amount of Twenty-five Thousand (\$25,000.00) Dollars.

## VIII.

Plaintiff demands a jury trial.

Rives, Peterson, Pettus & Conway, By Al G. Rives,  
Attorneys for Plaintiffs.

Tenth Floor, Massey Building, Birmingham 3, Alabama,  
Telephone ALpine 1-3275.

Note to United States Marshal:

Summons and complaint in this action should be served on Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks, etc. by leaving a copy thereof with the Honorable Earl M. McGowin, Director of the said Terminal Railway of the Alabama State Docks Department.

[fol. 100]

IN UNITED STATES DISTRICT COURT

Civil Action File No. 2588

Received April 20, 1961.

MRS. ELIZABETH W. WIGGINS and FRANK O. BURGE, JR.,  
who sue in their capacity as Administrators of the  
Estate of John Ervin Wiggins, deceased, Plaintiff,

v.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT;  
and TERMINAL RAILWAY OF ALABAMA STATE DOCKS,  
Defendants.

SUMMONS—April 20, 1961

To the above named Defendant:

You are hereby summoned and required to serve upon Mr. Al G. Rives, Attorney, Rives, Peterson, Pettus & Conway, plaintiff's attorneys, whose address is: Tenth Floor, Massey Building, Birmingham 3, Alabama, an answer to the complaint which is herewith served upon you, within (twenty) 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

William J. O'Connor, Clerk of Court.

Minnie Pearl Cox, Deputy Clerk.

(Seal)

[Seal of Court]

[fol. 101] Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

**Return on Service of Writ.**

I hereby certify and return, that on the 20th day of April 1961, I received this summons and served it together with the complaint herein as follows: By handing a copy of each to Mr. C. U. Irvine, General Manager Of Operations, Alabama State Docks for Terminal Railway of the Alabama State Docks Department; and for Terminal Railway of Alabama State Docks at Alabama State Docks, Mobile, Alabama on April 25th, 1961.

J. L. May, United States Marshal, By G. V. Manley, Jr., Deputy United States Marshal.

Travel	\$ .30
Service	4.00

Filed Apr. 26, 1961.

Motion to Quash Return of Service of Summons, or to Dismiss Action, Civil Action No. 2588;

Affidavit of C. U. Irvine, Civil Action No. 2588;

Affidavit of Ralph P. Eagerton, Civil Action No. 2588;

Affidavit of William J. Colley, Civil Action No. 2588;

Affidavit of John Patterson, Civil Action No. 2588;

Order Granting Motion to Quash Service and Granting Motion to Dismiss, Civil Action No. 2588;

[fol. 102] Corrected Order, Civil Action No. 2588;

Notice of Appeal, Civil Action No. 2588;

Omitted from the Printed Record pursuant to Appellants' Designation as to Printing Record heretofore copied at page 1.

IN UNITED STATES DISTRICT COURT  
Civil Action No. 2679

AUDREY E. PRICE, Plaintiff,

VS.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on October 2, 1959 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, Defendants.

COMPLAINT—Filed September 7, 1961

Comes the plaintiff in the above styled cause and brings this action against the defendants Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks, whose true and correct name and legal status is otherwise unknown to the plaintiff but who is the legal entity operating what was generally known as the Terminal Railway of the Alabama State Docks at Mobile, Alabama on October 2, 1959 and whose true and correct name and legal status will be added by amendment to plaintiff's complaint when ascertained, and for cause of action against the said defendants, alleges as follows:

I.

1. That the plaintiff Aubrey E. Price is a resident and citizen of Mobile County in the State of Alabama his address being 2410 Drake Street, Mobile, Alabama.



## II.

1. That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks are common carriers by railroad and as such common carriers by railroad have at all times herein mentioned been engaged in the business of operating a railroad for the transportation of freight for hire in commerce between the several states of the United States of America and in foreign commerce.

2. (a) That the said Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks are the only departments within the Government of the State of Alabama which operate solely from the money they make themselves.

(b) That the said defendants get no legislative appropriation, and

[fol. 104] (c) That the said defendants operate as a self-sustaining business, generating their own funds.

## III.

1. That the jurisdiction of the United States District Court for the Southern Division of the Southern District of Alabama is based upon (a) An Act of the Congress of the United States known as the Federal Employers Liability Act, Title 45, U.S.C.A. Section 51 et seq. and (b) Another Act of the Congress of the United States known as one of the Federal Safety Appliance Acts and generally referred to as the Hand Brake Act, namely, Title 45, U.S.C.A. Section II.

## IV.

1. That the defendants as such common carriers by railroad as described in Paragraph II, 1 of this complaint and their employees have at all times herein mentioned been subject to (a) The provisions of the aforesaid Federal Employers Liability Act, an Act of the Congress of the United States enacted for the protection and benefit of employees of common carriers by railroad

engaged in such aforesaid interstate and foreign commerce who are injured or killed in line of duty and (b) The provisions of the aforesaid Federal Safety Appliance Act.

## V.

### First Cause of Action

For plaintiff's first cause of action, plaintiff adopts the allegations of Paragraphs I, II, III and IV of this complaint [fol. 105] and adds thereto the following allegations, viz:

Plaintiff avers that on, to-wit, October 2, 1959 plaintiff was employed by the defendants as a railroad switchman at Mobile, Alabama and that a part of plaintiff's duties as such railroad switchman for the defendants was in furtherance of such aforesaid interstate or foreign commerce or directly or closely and substantially affected such commerce and that on said date while plaintiff was attempting to operate a hand brake on a railroad boxcar on Pier B7 of the Alabama State Docks, he was caused to be injured and damaged as follows: Plaintiff's back was wrenched, strained, sprained and twisted and the ligaments, muscles and tissues of plaintiff's back were stretched, torn and otherwise injured and plaintiff was injured internally and made sick and sore and caused to suffer great physical pain and mental and he will be caused to suffer great physical pain and mental anguish in the future and plaintiff's nerves and nervous system were shocked and impaired and plaintiff was caused to be hospitalized and caused to undergo medical care and treatment and caused to incur expense for medical care and treatment and for hospitalization and caused to lose wages from his employment and plaintiff's power and capacity to work and earn money in the future has been impaired; and plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the defendants' hauling or permitting to be hauled or used on its line of railroad the aforesaid railroad boxcar that was equipped with an inefficient hand brake and in violation of

the aforesaid Federal Safety Appliance Act known as the Hand Brake Act, Title 45, U.S.C.A. Section II.

[fol. 106]

## VI.

### Second Cause of Action

For plaintiff's second cause of action, the plaintiff adopts the allegations of Paragraph V of this complaint except that in lieu of the following allegations in said Paragraph V, viz:

"and plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the defendants' hauling or permitting to be hauled or used on its line of railroad the aforesaid railroad boxcar that was equipped with an inefficient hand brake and in violation of the aforesaid Federal Safety Appliance Act known as the Hand Brake Act, Title 45, U.S.C.A. Section II."

plaintiff inserts the following allegations, viz:

"and plaintiff avers that he was caused to sustain all of his aforesaid injuries and damages as a proximate result, in whole or in part, of the negligence of the officers, agents or employees of the defendants while acting within the line and scope of their employment by the defendants or by reason of a defect or insufficiency due to the negligence of the defendants in their aforesaid railroad boxcar or its appliances."

## VII.

Wherefore, plaintiff prays judgment against the defendants under each of the aforesaid causes of action in the amount of Five Thousand (\$5,000.00) Dollars less a credit of \$381.28 heretofore paid to the plaintiff by the defendants on account of lost time from work between October 2, 1959 and November 9, 1959 on account of the aforesaid injury.

## VIII.

Plaintiff demands a jury trial.

Rives, Peterson, Pettus & Conway, By Al G. Rives,  
Attorneys for Plaintiff.

Tenth Floor, Massey Building, Birmingham 3, Alabama,  
Telephone ALpine 1-3275.

Note to United States Marshal:

Summons and complaint in this action should be served on Terminal Railway of the Alabama State Docks Department and Terminal Railway of Alabama State Docks, etc. by leaving a copy thereof with the Honorable Earl M. McGowin, Director of the said Terminal Railway of the Alabama State Docks Department.

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[fol. 108] IN UNITED STATES DISTRICT COURT  
Civil Action File No. 2679

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AUDREY E. PRICE, Plaintiff,

V.

TERMINAL RAILWAY OF THE ALABAMA STATE DOCKS DEPARTMENT; and TERMINAL RAILWAY OF ALABAMA STATE DOCKS, ETC., Defendants.

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SUMMONS—September 8, 1961

To the above named Defendants:

You are hereby summoned and required to serve upon Mr. Al G. Rives, Attorney, Rives, Peterson, Pettus & Conway, plaintiff's attorneys, whose address is: Tenth Floor, Massey Building, Birmingham 3, Alabama, an answer to the complaint which is herewith served upon you, within (twenty) 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judg-

ment by default will be taken against you for the relief demanded in the complaint.

William J. O'Connor, Clerk of Court.  
Minnie Pearl Cox, Deputy Clerk.

(Seal)

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 109] Return of Service of Writ

I hereby certify and return, that on the 11th day of September, 1961, I received this summons and served it together with the complaint herein as follows: On September 13th, 1961 at Ala. State Docks, Mobile, Ala. I served copies of each on Mr. C. U. Irvine, Superintendent of Terminal Railway Of The Alabama State Docks Department, and Terminal Railway Of Alabama State Docks.

George M. Stuart, United States Marshal, By W. F. Armstrong, Deputy United States Marshal.

Marshal's Fees

Travel	\$ .40
Service	\$4.00
	<hr/>
	\$4.40

Filed Sep. 14, 1961.

Motion to Quash Return of Service of Summons or to Dismiss Action, Civil Action No. 2679;

Affidavit of C. U. Irvine, Civil Action No. 2679;

Affidavit of Ralph P. Eagerton, Civil Action No. 2679;

Affidavit of William J. Colley, Civil Action No. 2679;

Affidavit of John Patterson, Civil Action No. 2679;

[fol. 110] Order Granting Motion to Quash Service and Granting Motion to Dismiss Action, Civil Action No. 2679;



Corrected Order, Civil Action No. 2679;

Notice of Appeal, Civil Action No. 2679;

Omitted from the ~~Printed~~ Record pursuant to Appellants' Designation as to Printing Record heretofore copied at page 1.

IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD ON APPEAL—

Filed January 31, 1962

Come the appellants in the above styled causes, separately and severally, and hereby designate the following record, proceedings and evidence to be contained in the record on appeal in these actions:

1. The complaint and summons issued in each of the five cases, together with the return of the Marshal with respect to service of same.

2. The motion to quash return of service of summons or to dismiss action filed in each of the five actions.

3. Affidavits of Honorable John Patterson, William J. Colley, Ralph P. Eagerton and C. U. Urvine, filed in each of said actions in support of the motion to quash return of summons or to dismiss the action.

[fol. 111] 4. Depositions of Earl M. McGowin and C. U. Urvine together with all exhibits thereto.

5. Orders entered on the 29th day of December, 1961, in each of these actions, whereby each of the actions was dismissed, and the return of service of summons in each of said actions was quashed.

6. Corrected orders entered in each of these actions on the 22nd day of January, 1962, whereby the orders entered on the 29th day of December, 1961, were revised or corrected.

7. Notice of appeal filed in each of these actions.

8. Motion to consolidate the five cases on appeal.

9. Order entered January 29, 1962, consolidating cases on appeal.

10. This designation.

Al G. Rives, T. M. Conway, Jr., and Rives, Peterson, Pettus & Conway, By T. M. Conway, Jr., Attorneys for Plaintiffs.

[fol. 112] IN UNITED STATES DISTRICT COURT

ORDER CERTIFYING ORIGINAL DEPOSITIONS OF EARL M. McGOWIN AND C. U. IRVINE UP TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT—February 1, 1962

For cause shown,

It Is Ordered by the Court that the original depositions of Mr. Earl M. McGowin and Mr. C. U. Irvine be forwarded to the United States Court of Appeals for the Fifth Circuit, for examination by said Court in connection with the appeal herein and the Clerk of that Court is directed to return said depositions to the Clerk of this Court upon the conclusion of the appeal.

Made at Mobile, Alabama, this the 1st day of February A. D., 1962.

Daniel H. Thomas, United States District Judge.

U. S. District Court, Sou. Dist. Ala.

Filed and Entered this the 1st day of February, 1962, Minute Entry No. 9930.

William J. O'Connor, Clerk, By John V. O'Brien, Deputy Clerk.

[fol. 113] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 114] IN UNITED STATES COURT OF APPEALS

No. 19519

R. B. PARDEN, et al.;

versus

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—  
October 16, 1962

On this day this cause was called, and after argument  
by T. M. Conway, Esq., for appellants and by Willis C.  
Darby, Jr., Esq., for appellees was submitted to the Court.

[fol. 115]

Corrected.

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19519

R. B. PARDEN, et al., Appellants,  
versus

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al., Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA

OPINION—January 3, 1963

Before RIVES, CAMERON and BROWN, Circuit Judges.

CAMERON, Circuit Judge: This appeal involves the question whether the State of Alabama may be sued by its

citizen in a District Court of the United States on a claim based upon the Federal Employers Liability Act<sup>1</sup> for damages [fol. 116] for personal injuries sustained by its citizen while employed by a railroad belonging to the State of Alabama which was operated as a common carrier in interstate commerce and while he was so engaged. The action<sup>2</sup> was brought against Terminal Railway, Alabama State Docks; and the sovereign State of Alabama, entering its appearance specially, moved to quash the return of summons on it or to dismiss the action, on the grounds that the Terminal Railway was an agency of the State, that the State had not consented to be sued or waived its immunity, and that the judicial power of the United States

<sup>1</sup> Title 45 U.S.C.A. § 51:

"Every common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce . . . for such injury of death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or any insufficiency, due to its negligence, in its cars, engines, appliances, machinery . . . or other equipment."

Concurrent jurisdiction of actions under the statute is conferred by 45 U.S.C.A. § 56 in state and federal courts.

<sup>2</sup> Besides the action brought by R. B. Parden for personal injuries sustained July 13, 1958, four other actions were brought which involve the same jurisdictional facts as Parden's claim, varying only in the details of the facts as to liability and the injuries received. These four are: a second action filed by Parden for personal injuries sustained June 3, 1958; action by Otto Driskell alleging two injuries received by him on July 22, 1958; action by Mrs. Elizabeth W. Wiggins and Frank E. Burge, Jr., Administrators of the estate of John Irvine Wiggins, deceased, based on claims for two injuries received by him November 15, 1958 contributing to his death; and action by Aubrey E. Price claiming two separate personal injuries occurring Oct. 2, 1959, one based upon the Federal Employers Liability Act and the second upon the Federal Safety Appliance Act, 45 U.S.C.A. § 2. The several actions were consolidated for trial in the court below and for purposes of this appeal.

The first action of R. B. Parden will be discussed in most instances, but everything herein said will have reference also to the other four civil actions.

did not extend to this controversy because it is between a citizen of Alabama and the State of Alabama. Both motions were heard on the face of the pleadings supplemented by four affidavits and two depositions and were [fol. 117] granted by the court below in an order stating:

"It is Ordered by the Court that the motion of the Sovereign State of Alabama to quash return of service of summons be, and the same hereby is, Granted, and

"It is Further Ordered by the Court that the motion of the Sovereign State of Alabama to dismiss the action be, and the same hereby is, Granted, with costs herein taxed against the Plaintiff."

The parties do not contend on appeal that there is any dispute about the facts, but agree that the case presents only questions of law. The basic facts are here set forth and others will be adverted to in our discussion of the several arguments:

The Terminal Railway was and is wholly owned and operated by the State of Alabama, consists of about fifty miles of railroad tracks in the area adjacent to the Alabama State Docks at Mobile, Alabama, serving in addition several industries situated in the general vicinity, and operating an interchange railroad with Alabama, Tennessee and Northern Railroad Company, Louisville and Nashville Railroad Company, Southern Railway Company, and Gulf, Mobile and Ohio Railroad Company. A large percent of its operations are in interstate commerce; and it has contracts and working agreements with the various railroad brotherhoods, and makes reports to the Interstate Commerce Commission concerning injuries sustained by its employees, and keeps its accounts so as to comply with the regulations of the Interstate Commerce Commission.

Appellant Parden argues that the owner of every common carrier by railroad engaging in interstate commerce is liable for injuries to its employees so engaged under the clear and all-embracing language of the F.E.L.A. quoted



in footnote 1, *supra*,<sup>3</sup> that the State of Alabama is so liable because it operates this railroad under constitutional amendment<sup>4</sup> and statute;<sup>5</sup> and that, under the Commerce Clause of The United States Constitution and three Supreme Court cases hereinafter considered, it is subject to and liable under F.E.L.A. and the Safety Appliance Act to the same extent as an individual.

Alabama counters with the contention that the whole sum of the judicial power granted by the Constitution to the central government does not embrace any authority in its courts to entertain a suit brought by a citizen against his own State; and that the State of Alabama has not waived its immunity from suit. The appellant responds by asserting that the general principles relied upon by the State do not apply where the State is deemed to have consented to suit; and that, since Alabama is not protected by the Eleventh Amendment to the Constitution, it is deemed to have consented by the mere fact that it entered into and conducted the operation of an interstate railroad under the statutory and organic law of the State.<sup>6</sup>

We do not agree that the State of Alabama, by the mere fact that it legally operated an interstate carrier, sur-

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<sup>3</sup> And under the Federal Safety Appliance Act, Title 45, U.S.C.A. § 2, as to one of the civil actions now before us.

<sup>4</sup> Alabama Constitution 1901, Amendments 12 and 116.

<sup>5</sup> 1940 Code of Alabama (Recompiled, 1958) Title 38, §§ 17 and 45 (14, 16).

<sup>6</sup> Appellant's position is well epitomized in the following excerpts from its reply brief:

"None of the authorities cited under this subdivision of the opposing argument hold that the judicial power of the United States does not embrace the authority to entertain a suit brought by a citizen against his own state, where the State has consented to such suit. . . .

"We urge that it is a sound construction of the Federal Employers Liability Act, when considered in the light of Supreme Court decisions concerning the Safety Appliance Acts and the Railway Labor Act, that Congress has prohibited any entity, state or private, from engaging in business as an interstate common carrier railroad, without consenting to be sued

rendered its right not to be sued, which belongs to the Union and all the States in it, except as explicitly provided otherwise in the Constitution. It is conceded that Alabama could not be sued by a citizen of another State seeking to assert the identical right claimed here. This, the appellant conceives to be a protection vouchsafed by the Eleventh Amendment which, it says, Alabama does not possess when it is sued by its own citizen. We think this attitude arises from a misunderstanding of the effect of the Eleventh Amendment and of the status of the States of the Union independent of it. This is made clear by a brief consideration of the history of the Amendment as developed in decisions of the Supreme Court.

[fol. 120] Almost before the ink had dried on the signatures to the Constitution, a citizen of South Carolina filed suit against the State of Georgia in the Supreme Court of the United States asserting jurisdiction under Article III, Section 2, Clause 1 of the Constitution.<sup>7</sup> The Supreme Court<sup>8</sup> upheld the claimed right in a decision whose essence the syllabus sums up in these words: "A State may be sued, in the Supreme Court, by an individual citizen of another State . . ."

The people, who had just adopted a Constitution which delegated certain powers to the central government, did not agree with this construction of what they had written; and they promptly adopted the Eleventh Amendment: "The Judicial power of the United States *shall not be construed*

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in a United States District Court under the Federal Employers Liability Act. . . .

"As we see it, if the Constitution of the State of Alabama authorizes the operation of this railroad, then it is subject to all the provisions of the Federal Employers Liability Act. Liability under the Act can be avoided only if the State is acting unconstitutionally by operating the Terminal Railway of Alabama State Docks."

<sup>7</sup> "The judicial Power shall extend . . . to controversies . . . between a State and Citizens of another State; . . . and between a State . . . and foreign States, Citizens or Subjects." [Emphasis added.]

<sup>8</sup> *Chisolm, Executor v. Georgia*, 1793, 2 U.S. 419.

to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." [Emphasis supplied.]

The Amendment dealt solely with the prepositional phrases—"between a State and Citizens of another State" and "between a State . . . and foreign States, Citizens or Subjects"—being cast in the precise words of those phrases. And it dealt with the *construction* of those phrases only, stating without equivocation that the grant of power was not to be construed as authorizing a citizen or subject to sue another State. It directed simply that no court considering that phrase should have the power to construe [fol. 121] it other than as directed by the Eleventh Amendment. The Amendment did not add anything to the Constitution and did not take anything from it. It simply gave directions as to the meaning of a phrase already in the Constitution. It was definitely a limitation on the right of any court to construe that language of the Constitution in such a way as to diminish the immunity from suit which is an essential and universal attribute of sovereignty.

It was not necessary that the Amendment negate the right of a citizen to sue his own State because Article III of the Constitution, which alone deals with the federal Judiciary and defines the judicial power being delegated to the central government, nowhere mentions or hints at a case or controversy between a State and its own citizens as being justiciable by any court. As against its own citizens, therefore, a State did not need and has never needed the shelter or protection of the Eleventh Amendment.

It was almost a century after *Chisolm v. Georgia* and the Eleventh Amendment before the Supreme Court was faced with a suit brought by a citizen against his own State, *Hans v. Louisiana*, 1890, 134 U. S. 1. Jurisdiction in the Circuit Court was claimed under Article III of the Constitution, which declares that "The Judicial Power of the United States shall extend to all cases in law and equity arising under the Constitution, the laws of the United States and treaties made . . .," and the Act of March 3, 1875, 18 Stat. 470, c. 137, §1, now 28 U.S.C.A. §1331 (a),

vesting in the Circuit Courts jurisdiction "of all suits of a civil nature at common law or in equity, arising under the Constitution or laws of the United States, or treaties [fol. 122] made . . ." The lower court dismissed the suit and the Supreme Court affirmed without a dissent.

The opinion analyzes thoroughly the decision in *Chisólm v. Georgia*, the Eleventh Amendment, and the debates among the writers of the Constitution, and, in addition, those between Mason and Patrick Henry on one side and Madison and Marshall on the other, in the Virginia Convention. It quotes from Madison: "Its jurisdiction [the Federal jurisdiction] in controversies between a State and citizens of another State is much objected to, and perhaps without reason. It is not in the power of individuals to call any State into court. The only operation it can have is that, if a State should wish to bring a suit against a citizen, it must be brought before the Federal Court"; and from Marshall: "With respect to disputes between a State and the citizens of another State, its jurisdiction has been decried with unusual vehemence. I hope that no gentleman will think that a State will be called at the bar of the Federal Court . . . It is not rational to suppose that the sovereign power should be dragged before a court. The intent is to enable States to recover claims of individuals residing in other States. . . ." And it characterizes the contention that the passage of the Eleventh Amendment had the effect of leaving a State open to suit by its own citizens in cases arising under the Constitution or laws of the United States as " . . . supposition . . . almost an absurdity on its face." [Pp. 14 and 15.]

After quoting from a statement by Chief Justice Taney in *Beers et al. v. Arkansas*, 20 Howard 527, 530: "It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, [fol. 123] or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege and permit itself to be made a defendant in a suit by individuals, or by another State. And as this permission is altogether voluntary on the part of the sovereignty, it follows that it may prescribe the terms and conditions on

which it consents to be sued . . ."; the opinion states its conclusion thus:

"It is not necessary that we should enter upon an examination of the reason or expediency of the rule which exempts a sovereign State from prosecution in a court of justice at the suit of individuals. This is fully discussed by writers on public law. It is enough for us to declare its existence . . ."

This decision in *Hans v. Louisiana* has been cited as authority by the Supreme Court in approximately thirty cases.\*

This line of cases constitutes a continuing affirmation by the Court of the basic principle that the federal judicial system is one of enumerated powers, not of enumerated limitations upon power. The lack of power in the court below, therefore, to entertain a suit by the individual against the State is not dependent upon the negative language of the Eleventh Amendment, which merely points out that such power is not given, but on the basic fact that such power is not lodged in the federal judiciary under our constitutional system.

[fol. 124] It is clear, therefore, that a State has the same constitutional immunity from suit by its own citizens as it has in suits brought against it by citizens of other States, and the courts will apply the same tests in determining whether the State has waived its immunity against its own citizen as it would apply if the suit were by a citizen of another State.

The *Ford Motor Company* case, *supra*, stands for the well settled rule that waiver by a State of its sovereign immunity must be clearly shown, and that whether such a waiver has been established presents a question to be decided

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\* E.g., *Ford Motor Co. v. Dept. of Treas. of Indiana*, 323 U.S. 459, 464; *Great Northern Ins. Co. v. Read Ins. Comm.*, 1944, 322 U.S. 47, 51; *Monaco v. Mississippi*, 1934, 292 U. S. 313, 322; *Williams v. United States*, 1933, 289 U.S. 553, 575; *Ex parte State of New York*, 1921, 256 U. S. 490, 497; *Duhne v. New Jersey*, 1920, 251 U. S. 314, 313; *Palmer v. Ohio*, 1918, 248 U.S. 32, 34; *Ex parte Young*, 1908, 209 U.S. 123, 150.



under State law (pp. 466-470). And cf. *Louisiana Land and Exploration Co. v. State Mineral Board*, 5 Cir., 1956, 229 F. 2d 5, certiorari denied, 351 U. S. 975.

The Supreme Court of Alabama considered the provisions of the Alabama Constitution and statutes involved in the case before us in *State Docks Commission v. Barnes*, 1932, 143 So. 581. It was there decided that a claim for the death of one of the employees of the State Docks Commission was a claim against the State, which was "performing a business or corporate power and not a governmental function." Continuing, the court said (page 582):

"But Section 14 of the Bill of Rights of the Alabama Constitution provides that the State shall never be made a defendant in any court of law or equity. The State cannot consent to such a suit. This means not only that the State itself may not be sued, but that this cannot be indirectly accomplished by suing its officers or agents in their official capacity, when a [fol. 125] result favorable to plaintiff would be directly to affect the financial status of the State treasury . . ."

"The right to sue a State, in either a federal or a state court, cannot be derived from the Constitution or laws of the United States. It can come only from the consent of the State. *Beers v. Arkansas*, 20 Howard 527; *Railroad Company v. Tennessee*, 101 U. S. 337; *Hans v. Louisiana*, 134 U. S. 1." So says the Supreme Court in *Palmer et al. v. State of Ohio*, 1918, 248 U. S. 32. And it is not contended that Alabama has given its express consent, but, on the contrary, its Supreme Court has held that it cannot so consent.

It is pertinent to mention that the State of Alabama has provided payment for injury to or death of any employee of the agency here involved "where in law, justice or good morals the same should be paid;" and that the remedy so provided is characterized by the Supreme Court as "a workmen's compensation law for State employees," *State Board of Adjustment v. Lacks*, 1945, 22 So. 2d 377; and cf. *Hawkins v. State Board of Adjustment*, S. Ct. Ala., 1942, 7 So. 2d 775.

It remains but to consider the three Supreme Court cases upon which appellant bases his chief reliance. The appellant frankly points out that none of the cases are applicable on their facts, but contends that some of the language found in the opinions warrants the assumption that, by operation of law, Alabama necessarily waived its immunity from suit by electing to operate a common carrier engaged in interstate commerce. The language of each of the cases is, of course, limited to the facts with which the Court was dealing.

[fol. 126] In *United States v. California*, 1936, 297 U. S. 175, it was claimed that § 6 of the Safety Appliance Act vested jurisdiction in the district court to entertain the suit by the United States for a statutory penalty imposed for violation of the Act. The application of the decision of the Supreme Court in that case, insofar as it has possible relation to the question before us, is thus pinpointed at page 187:

"Article III, § 2 of the Constitution extends the judicial power of the United States and the original jurisdiction of the Supreme Court to cases 'in which a State shall be a party.' . . . But Congress may confer on inferior courts concurrent original jurisdiction of such suits. . . . Section 233 of the Judicial Code, 28 U.S.C., 341 . . . gives to this Court 'exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens or between a State and citizens of other States or aliens.' "

The Court then goes on to decide that the later enacted § 6 of the Safety Appliance Act provides that the penalty which it imposes supersedes, for practical reasons, the provisions of the Judicial Code and, therefore, vests in the district court jurisdiction to recover the penalty against the State. The power to maintain the suit against the State is specifically vested by the Constitution in the United States. The case does not hint that an individual in whom the Constitution does not vest such a power could maintain such a suit against a State.

The action in *California v. Taylor, et al.*, 1957, 353 U. S. 553, was brought by five employees of the State Belt Railroad [fol. 127] operated by the Board of State Harbor Commissioners of California against the ten members of the National Railroad Adjustment Board, First Division, and its Executive Secretary. The United States, answering on behalf of the Board, supported the charges in the complaint that the Belt Road was governed by the Railway Labor Act of 1926 rather than by the Civil Service Laws of the State of California. The State of California intervened as a party defendant and opposed the claim of the employees of the Belt Railroad in which they sought to invoke the machinery of the Railway Labor Act. The Supreme Court held that the operation of the Belt Railroad was covered by the Railway Labor Act, and referred to the fact that several State courts, including an intermediate appellate court of California,<sup>10</sup> had held state owned belt railroads such as the ones here involved subject to the Federal Employers Liability Act. Following its decision in *United States v. California*, supra, the Supreme Court held that Congress had the right to regulate the California Belt Railroad's employment relationships. In Note 16, page 568, however, the Supreme Court stated:

"The contention of the State that the Eleventh Amendment to the Constitution of the United States would bar an employee of the Belt Railroad from enforcing an award by the National Labor Relations Board in a suit against the State in a United States District Court under §3, First (p) of the Act is not before us under the facts of this case."

This statement by the Supreme Court disposes of the contention of the appellants that this case is authority for the contention that Alabama had waived its immunity from suit.

*Petty v. Tennessee-Missouri Bridge Commission*, 1959, 359 U. S. 275, involved the question whether Tennessee and Missouri had waived their immunity to be sued when those States entered into a compact, with Congressional

<sup>10</sup> *Maurice v. State, Dist. Ct. App., Cal.*, 1941, 110 P. 2d 706.

approval, for the construction of a bridge over the Mississippi River. To build and manage the bridge, there was created the Tennessee-Missouri Bridge Commission, a "body corporate and politic," wherein it was provided that the Commission had the power "to contract, to sue and be sued in its own name." The Court, after noting that "The conclusion that there has been a waiver of immunity will not be lightly inferred, *Murray v. Wilson Distilling Co.*, 213 U. S. 151, 171," decided that, under the facts of that case and "where the waiver is, as here, claimed to arise from a compact between several States," the Commission was suable under the sue-and-be-sued clause interpreted in the light of the conditions attached by Congress in approving the bridge over the navigable stream.<sup>11</sup> We think that the case is not authority for the waiver claimed here, and refer to the language used by this Court in *Mc* [fol. 129] *Dermott & Co. v. Department of Highways, State of Louisiana*.<sup>12</sup>

<sup>11</sup> In a footnote, Mr. Justice Frankfurter, dissenting (page 289), stated the following:

"Suit in *United States v. California*, 297 U.S. 175, was instituted by the United States, and jurisdiction over such an action is not within the proscription of the Eleventh Amendment. In *California v. Taylor*, 353 U. S. 553, the State intervened in an action brought against the National Railroad Adjustment Board, hence voluntarily submitted itself to the jurisdiction of the federal courts."

<sup>12</sup> 5 Cir., 1959, 267 F. 2d 317, 318.

"Appellee, in its turn, citing, as settling the law to the contrary of this contention, other cases and *Petty v. Tenn.-Mo. Bridge Comm.*, 8 Cir., 254 F. 2d 857, reversed (three judges dissenting) in *Petty v. Tenn.-Mo. Bridge Comm.*, 358 U.S. 811 . . . not in principle but on the sole ground that the Act of Congress approving the interstate compact had made provision for the suit there brought, urges upon us that the judgment must be affirmed.

"This Court in a case involving a collision with a bridge in Broward County, Florida [*Broward County, Florida v. Wickman*, 5 Cir., 195 F. 2d 614], has settled it for this Circuit, as the Supreme Court in *Ex parte, State of New York*, 356 U. S. 490, . . . has for the country as a whole, that 'the immunity of a State from a suit in personam in the admiralty brought by a private person without its consent is clear.'"

Based upon the authorities cited and the foregoing reasons; we hold that the State of Alabama is constitutionally immune from suit under the facts before us and that there has been no waiver of this immunity. The judgments entered in the captioned case and the others consolidated with it by order of the court below are

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AFFIRMED.

BROWN, Circuit Judge, concurring specially:

I concur in the result and in much of the Court's opinion.

But in at least two places the Court states that "the State of Alabama is *constitutionally* immune from suit." — F. [fol. 130] 2d —.<sup>1</sup> Apart from the Eleventh Amendment, I find nothing in the Constitution nor in the elaborate structure of the opinion in *Hans v. Louisiana*, 1890, 134 U. S. 1, 10 S. Ct. 504, 33 L. Ed. 842, to support that conclusion as a matter of federal constitutional law. Sovereign immunity, threadbare as it generally is, is recognized in law. It may, as it does here, deny effectual enforcement to a clear legal right. But that does not raise this notion to the stature of a federal constitutional right.

Moreover, I think the constitutional crisis generated by *Chisholm v. Georgia*, 1792, 2 U. S. 2 Dall 419, 1 L. Ed. 440, refutes this Court's thesis that when it was all said and done the Eleventh Amendment " . . . did not add anything to the Constitution and did not take anything from it." — F. 2d —. And to the extent that *Hans v. Louisiana* really puts the result on the basis of the traditional immunity of a State, rather than on the obvious implications of the Eleventh Amendment, it seems clear to me that the Supreme Court did not undertake to cast it,<sup>2</sup> as does

<sup>1</sup> See also: "It is clear, therefore, that a State has the same *constitutional* immunity from suit by its own citizens as it has in suits brought against it by citizens of other States, and the courts will apply the same tests in determining whether the State has waived its immunity against its own citizen as it would apply if the suit were by a citizen of another State." — F. 2d —.

<sup>2</sup> The strongest statement in *Hans* in this direction is: "The truth is, that the cognizance of suits and actions unknown to the law, and forbidden by the law, was not contemplated by the Con-



[fol. 131] this Court, in terms of a Constitution of enumerated powers and the "basic fact that such power is not lodged in the federal judiciary under our constitutional system." — F. 2d —. This latter would, among other things, mean that *jurisdiction* would be conferred by consent (of the sovereign waiving its immunity). This certainly contradicts a basic concept of a limited federal jurisdiction.

What the case presents is the anomaly of a clear legal right without any means of effectual enforcement. Without a doubt, Alabama and its operating agencies, the Terminal Railway and Docks Department are subject to the FELA. It is even likely that its scheme of vicarious workmen's compensation constitutes an outright violation of the Act which prohibits any contract, rule, regulation or device to enable a common carrier to exempt itself from the liabilities imposed.<sup>3</sup>

But clear as is the legal right, invalid as is the substitute compensation program, neither in the FELA nor in the

stitution when establishing the judicial power of the United States." 134 U. S. 1, 15.

The Court speaks again in terms of suits unknown to or forbidden by law in *Fitts v. McGhee*, 1899, 172 U. S. 516, 524, 19 S. Ct. 269, 43 L. Ed. 535.

"Is this a suit against the state of Alabama? It is true that the Eleventh Amendment of the Constitution of the United States does not in terms declare that the judicial power of the United States shall not extend to suits against a state by citizens of such state. But it has been adjudged by this court upon full consideration that a suit against a state by one of its own citizens, the state not having consented to be sued, was unknown to and forbidden by the law, as much so as suits against a state by citizens of another state of the Union, or by citizens or subjects of foreign states. *Hans v. Louisiana*, 134 U. S. 1, 10, 15 [33:842, 845, 847]; *North Carolina v. Temple*, 134 U. S. 22 [33:849]. It is therefore an immaterial circumstance in the present case that the plaintiffs do not appear to be citizens of another state than Alabama, and may be citizens of that state."

<sup>3</sup> "Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void \* \* \*." 45 USCA § 55.

Alabama statutes prescribing the physical operation of this [fol. 132] interstate carrier is there enough material out of which to extract even the faintest notion of a waiver of that traditional immunity which Alabama painstakingly has additionally preserved by its own express constitutional provision.

The suit therefore must fall. But we should not by our discussion couched in language of a *constitutional* immunity apart from the Eleventh Amendment foreclose remedial action by Congress or, perhaps, judicial relief in its own courts at the hands of agencies of the United States Government whose statutory policy may not be thwarted by this plea.

[fol. 133]

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IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19,519

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D. C. Docket Nos. 2551, 2552, 2553, 2588, 2697 Civil.

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R. B. PARDEN, et al., Appellants,

versus

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al., Appellees.

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Appeals from the United States District Court for the  
Southern District of Alabama

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Before Rives, Cameron and Brown, Circuit Judges.

JUDGMENT—January 3, 1963

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgments entered

in the captioned case and the others consolidated with it by order of the court below be, and the same are hereby, affirmed;

It is further ordered and adjudged that the appellants, R. B. Parden, and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Brown, Circuit Judge, Concurs Specially" January 3, 1963.

Issued as Mandate: Mar 20 1963

[fol. 134] Petition for Rehearing and Brief in Support covering 12 pages filed January 23, 1963, omitted from this print. It was denied, and nothing more by order, February 27, 1963.

[fol. 144]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19519

R. B. PARDEN, et al., Appellants,

v.

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al., Appellees.

Appeals from the United States District Court for the  
Southern District of Alabama

ORDER DENYING PETITION FOR REHEARING—  
February 27, 1963

Before RIVES, CAMERON and BROWN, Circuit Judges.

Per Curiam.

It Is Ordered that appellants' petition for rehearing be, and it is hereby Denied.

[fol. 145] Clerk's Certificate to foregoing transcript  
(omitted in printing).

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[fol. 146]

SUPREME COURT OF THE UNITED STATES

No. 157, October Term, 1963

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R. B. PARDEN, et al.,

Petitioners,

vs.

TERMINAL RAILWAY OF THE ALABAMA STATE  
DOCKS DEPARTMENT, et al.

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ORDER ALLOWING CERTIORARI—October 14, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.